

TABLE OF CONTENTS

	PAGE
Relevant Docket Entries	1
Bill of Complaint <i>in Chancery No. 22751</i>	4
Bill of Complaint in Chancery No. 22752	14
Amended Bill of Complaint in Chancery No. 22752	20
Exhibit A - Certificate of Incorporation of Little Hunting Park, Incorporated	24
Exhibit B - Revised By-Laws	27
Answer and Grounds of Defense in Chancery No. 22751	36
Demurrer in Chancery No. 22752	40
Demurrer to Amended Complaint in Chancery No. 22752 ...	40
Order in Chancery No. 22752 (overruling demurrer)	41
Answer and Grounds of Defense in Chancery No. 22752	42
Excerpts from Proceedings, March 22, 1967	44
Witnesses:	
Paul E. Sullivan (direct)	45
(cross)	82
(redirect)	89
Joseph Wingler (direct)	94
(cross)	95
Joseph Gartlan (direct)	95
Robert A. Marshall (direct)	99
James F. Sutherland (direct)	108
Flora Sullivan (direct)	112
(redirect)	116
Theodore R. Freeman, Jr. (direct)	116
Virginia Moore (direct)	119
(redirect)	144
John R. Hanley (direct)	147
(cross)	150
Vernon Leroy Lennon (direct)	150
(Cross)	152

Oskar Egger (direct)	155
(cross)	157
Jewell Gonzalez (direct)	158, 166
(cross)	161
Virginia Moore (direct)	161
(cross)	165, 166
Paul Forbes (direct)	167
(cross)	170
John M. Wells (direct)	172
(cross)	175
Plaintiffs' Exhibit No. 3 - Deed of Lease	177
Plaintiffs' Exhibit No. 7 - Letter, 24 May 1965, "Dear Mem- ber"	178
Plaintiffs' Exhibit No. 8 - Letter, May 25, 1965, from Paul E. Sullivan to S. L. Lennon	175
Plaintiffs' Exhibit No. 9 - Letter, July 30, 1965, John Chas. Harris to Paul E. Sullivan	180
Plaintiffs' Exhibit No. 10 - Letter, August 3, 1965, Joseph V. Gartlan, Jr. to John Charles Harris	183
Plaintiffs' Exhibit No. 11 - Letter, Aug. 9, 1965, John Chas. Harris to Joseph V. Gartlan, Jr.	185
Plaintiffs' Exhibit No. 12 - Letter, June 5, 1965, Paul E. Sul- livan to "Members"	188
Plaintiffs' Exhibit No. 13 - Letter, 7 July 1965, Virginia Moore to Paul E. Sullivan	190
Plaintiffs' Exhibit No. 14 - Letter, June 12, 1965, Paul E. Sullivan to Board of Directors	191
Plaintiffs' Exhibit No. 15 - Letter, 12 June 1965, Virginia Moore to Mr. Sullivan	192
Plaintiffs' Exhibit No. 16 - Letter, June 25, 1965, Paul E. Sullivan to Rev. Thomas J. Cassidy	193
Plaintiffs' Exhibit No. 19 - Letter, July 9, 1965, Joseph V. Gartlan, Jr. to Mrs. Virginia Moore	198
Plaintiffs' Exhibit No. 20 - Letter, 27 Aug. 1965, Virginia Moore to Paul Sullivan	200

Plaintiffs' Exhibit No. 21 - Letter, July 14, 1965, to Board of Directors from certain members	201
Plaintiffs' Exhibit 28 - Urban Land Institute Bulletin	202, 253
Plaintiffs' Exhibit 29 - Article - "Community Swimming Pool"	202, 261
Plaintiffs' Exhibit 42 - Notice of membership meeting, July 21, 1965	203
Excerpts from Proceedings, April 12, 1967	205
Witnesses:	
Theodore R. Freeman, Jr. (direct)	205
Laura Freeman (direct)	213
Paul E. Sullivan (direct)	216
(redisect)	222
Dolores Hoover (direct)	223
Flora L. Sullivan (direct)	228
Letter opinion, April 7, 1967, James Keith, J., in Chancery No. 22751	232
Decree in Chancery No. 22751	233
Letter opinion, April 21, 1967, James Keith, J., in Chancery No. 22752	235
Decree in Chancery No. 22752	236
Letter, June 9, 1967, Allison W. Brown, Jr. to John Charles Harris	237
Letter, June 12, 1967, John Chas. Harris to Allison W. Brown, Jr.	238
Affidavit of Allison W. Brown, Jr., July 6, 1967	238
Affidavit of Allison W. Brown, Jr., July 8, 1967	241
Opinion of the Supreme Court of Appeals of Virginia, Dec. 4, 1967, in Sullivan v. Little Hunting Park, Inc.	242
Opinion of Supreme Court of Appeals of Virginia, Dec. 4, 1967, in Freeman v. Little Hunting Park, Inc.	243
Opinion of the Supreme Court of the United States dated June 17, 1968	244

Mandate of the Supreme Court of the United States dated Oct. 4, 1968	245
Opinion of the Supreme Court of Appeals of Virginia dated Oct. 14, 1968	247
Order of the Supreme Court of Appeals of Virginia dated Oct. 14, 1968	249
Order granting certiorari, filed April 1, 1969	251

Relevant Docket Entries

Paul E. Sullivan, et al v. Little Hunting Park, Inc., et al.

1966

March 16 - Bill of complaint filed.

April 11 - Answer and grounds of defense filed.

June 13 - Motion for preliminary injunction filed.

June 13 - Notice of motion for preliminary injunction filed.

June 24 - Decision denying motion for preliminary injunction.

July 13 - Order denying motion for preliminary injunction.

1967

January 23 - Interrogatories to defendants filed.

February 20 - Answers to interrogatories filed.

March 22 - Trial opened.

March 23 - Trial closed.

April 7 - Decision of trial court.

April 12 - Decree of trial court.

June 8 - Notice of appeal and assignments of error filed.

June 12 - Motion for correction of the record filed.

June 12 - Notice of motion for correction of the record filed.

June 20 - Order granting motion for correction of the record.

August 4 - Petition for appeal filed.

December 4 - Decision of Supreme Court of Appeals of Virginia.

T. R. Freeman, Jr., et al. v. Little Hunting Park, Inc., et al.

1966

March 16 - Bill of complaint filed.

April 11 - Demurrer filed.

July 5 - Amended bill of complaint filed.

July 21 - Order to permit filing of amended bill of complaint filed.

August 9 - Demurrer to amended bill of complaint filed.

September 23 - Order denying demurrer.

September 30 - Answer and grounds of defense filed.

1967

April 3 - Motion for production of documents and records under Rule 4:9 filed.

April 3 - Notice of motion for production of documents and records under Rule 4:9 filed.

April 10 - Order for production of documents and records.

April 12 - Trial opened and closed.

April 21 - Decision of trial court.

May 8 - Decree of trial court.

June 8 - Notice of appeal and assignments of error filed.

June 12 - Motion for correction of the record filed.

June 12 - Notice of motion for correction of the record filed.

June 20 - Order granting motion for correction of the record.

August 25 - Petition for appeal and motion to consolidate with Sullivan v. Little Hunting Park, Inc., filed.

December 4 - Decision of Supreme Court of Appeals of Virginia.

* * *

1968

March 1 - Petition for a writ of certiorari to the Supreme Court of Appeals of Virginia filed.

June 17 - Decision of Supreme Court of the United States granting certiorari and remanding case to the Supreme Court of Appeals of Virginia.

July 12 - Mandate of Supreme Court of United States.

October 4 - Mandate (corrected) of Supreme Court of the United States.

October 14 - Decision of Supreme Court of Appeals of Virginia.

October 14 - Order of Supreme Court of Appeals of Virginia.

1969

January 10 - Petition for a writ of certiorari to the Supreme Court of Appeals of Virginia filed.

April 1 - Order of Supreme Court of the United States granting certiorari.

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, an adult,
 FLORA L. SULLIVAN, an adult, and
 WILLIAM F. SULLIVAN, a minor,
 GRACIELA P. SULLIVAN, a minor,
 ANA I. SULLIVAN, a minor,
 MAIRE SULLIVAN, a minor,
 M. DOLORES SULLIVAN, a minor,
 M. MONICA SULLIVAN, a minor,
 BRIGID SULLIVAN, a minor,
 who sue by and through PAUL E. SULLIVAN,
 their father and next friend

7113 Coventry Road
 Alexandria, (Fairfax County), Virginia
 Plaintiffs,

v.

In Chancery No.
 22751

LITTLE HUNTING PARK, INC., and

MRS. VIRGINIA MOORE
 6417 Olmi-Landrith Drive
 Alexandria, (Fairfax County), Virginia

RONALD L. ARNETTE
 7019 Canterbury Lane
 Alexandria, (Fairfax County), Virginia

S. LEROY LENNON
 2616 Woodlawn Lane
 Alexandria, (Fairfax County), Virginia

RAYMOND R. RIESGO
 7120 Coventry Road
 Alexandria, (Fairfax County), Virginia

MRS. MARJORIE MADSEN
 6511 Cygnet Drive
 Alexandria, (Fairfax County), Virginia

WILLIAM J. DONOHUE
 7037 Quander Road
 Alexandria, (Fairfax County), Virginia

OSKAR W. EGGER

7003 Stanford Drive
Alexandria, (Fairfax County), Virginia

MILTON L. JOHNSON

6417 Bluebill Lane
Alexandria, (Fairfax County), Virginia

individually and as directors of Little
Hunting Park, Inc.,

Defendants.

BILL OF COMPLAINT

To the Honorable, the Judge of the Circuit Court of Fairfax County:

Your plaintiffs respectfully represent as follows:

FACTS

1. That the plaintiffs Paul E. and Flora L. Sullivan are husband and wife, and William F. Sullivan, age 15, Graciela P. Sullivan, age 13, Ana I. Sullivan, age 12, Maire Sullivan, age 10, M. Dolores Sullivan, age 9, M. Monica Sullivan, age 6, and Brigid Sullivan, age 1-1/2, are their children.

2. Defendant Little Hunting Park, Inc. is a corporation incorporated in 1954 under the laws of Virginia for the purpose of maintaining and operating a community recreation facility and swimming pool for the benefit of residents and former residents of the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia.

3. The defendants Mrs. Virginia Moore, Ronald L. Arnette, S. Leroy Lennon, Raymond R. Riesgo, Mrs. Marjorie Madsen, William J. Donohoe, Oskar W. Egger and Milton L. Johnson were members of the Board of Directors of defendant Little Hunting Park, Inc. at times here pertinent.

4. From about December 1950 to about March 1962, plaintiffs Paul E. and Flora L. Sullivan and their children resided at premises which said plaintiffs Paul E. and Flora

L. Sullivan then owned, and continue to own, located at 6810 Quander Road, in the Bucknell Manor subdivision, Fairfax County, Virginia.

5. On or about May 16, 1955, while a resident of the aforesaid premises located at 6810 Quander Road, and as owner thereof, plaintiff Paul E. Sullivan was eligible to, and did purchase, for the price of \$150.00 a membership share in defendant Little Hunting Park, Inc. On or about the aforesaid date, said defendant corporation issued to said plaintiff in writing and under seal a certificate, serially numbered 290, of said plaintiff's membership in said corporation.

6. Since about March 1962 plaintiffs Paul E. and Flora L. Sullivan and their children have resided at premises which said plaintiffs Paul E. and Flora L. Sullivan own, located at 7113 Coventry Road, in the White Oaks subdivision, Fairfax County, Virginia.

7. At the time plaintiffs Paul E. and Flora L. Sullivan purchased the premises at 7113 Coventry Road where they presently reside, in consideration of the total purchase since paid by said plaintiffs, the vendor conveyed to them the membership which said vendor owned in defendant Little Hunting Park, Inc. On or about June 19, 1962, plaintiff Paul E. Sullivan, as the transferee of the aforesaid vendor's membership, was issued by the defendant corporation in writing and under seal a certificate, serially numbered 925, of said plaintiff's membership in said corporation.

8. Since about June 1962, plaintiff Paul E. Sullivan has leased to various tenants the aforesaid premises located at 6810 Quander Road, Alexandria, (Fairfax County), Virginia; in each of the deeds of lease, extending over the summers of 1963 and 1964, said plaintiff, as part of the leasehold interest, demised and assigned Little Hunting Park, Inc. membership No. 290 free of all charges, dues and assessments, which charges, dues and assessments said plaintiff himself paid each of the aforesaid years, pursuant to his contractual obligation under each of the aforesaid deeds of lease; the assignments of membership No. 290 under each

of the aforesaid leases were approved by the Board of Directors of the defendant corporation.

9. On February 1, 1965, plaintiff Paul E. Sullivan entered into a deed of lease with T. R. Freeman, Jr., lessee, whereby said plaintiff demised to the lessee for the term of one year the aforesaid premises located at 6810 Quander Road and Little Hunting Park, Inc. membership No. 290 for a rent of \$1,548.00 payable in twelve monthly installments of \$129.00. The deed of lease between said plaintiff and the lessee was extended in identical terms for an additional year by the execution of a renewal instrument on February 1, 1966.

10. On or about February 1, 1965, the lessee, T. F. Freeman, Jr., his wife and two children, moved their personal and household possessions into the aforesaid dwelling, and they have since resided at that location.

11. In May 1965, plaintiff Paul E. Sullivan, pursuant to his contractual obligation under the aforesaid deed of lease with T. R. Freeman, Jr., lessee, paid the annual dues in the amount of \$37.00 on Little Hunting Park, Inc. membership No. 290 and performed all necessary acts prescribed by the Certificate of Incorporation and By-Laws of the defendant corporation to obtain approval by the Board of Directors of said corporation of the assignment of said membership to said lessee.

12. T. R. Freeman, Jr., in every manner required by the Certificate of Incorporation and By-Laws of defendant Little Hunting Park, Inc. has taken all of the necessary steps to qualify himself as an assignee of said membership No. 290.

13. T. R. Freeman, Jr. and his wife and children are members of the Negro race.

14. On or about May 25, 1965, plaintiff Paul E. Sullivan received a letter from defendant Little Hunting Park, Inc., advising him that at a regular meeting of the Board of Directors of said corporation held May 18, 1965, said plaintiff's assignment of membership No. 290 to T. R. Freeman,

Jr. was not approved; tendered with said letter was a refund of the \$37.00 annual dues which said plaintiff had paid on membership No. 290.

15. Defendant Little Hunting Park, Inc. and its Board of Directors have refused to approve, and continue to refuse to approve, the assignment of membership No. 290 from plaintiff Paul E. Sullivan to T. R. Freeman, Jr., lessee, solely because of the race or color of said lessee and his wife and children.

16. On or about July 8, 1965, plaintiff Paul E. Sullivan received a letter dated July 7, 1965, from defendant Little Hunting Park, Inc. advising him that at the June meeting of the Board of Directors of said corporation it had been voted unanimously by those present that there appeared to be "due cause" for said plaintiff's expulsion from said corporation, and that in connection therewith a "hearing" would be held at the time and place named in said letter.

17. The aforesaid letter received by plaintiff Paul E. Sullivan dated July 7, 1965, from defendant Little Hunting Park, Inc. referred to action taken by the Board of Directors of said corporation at a meeting held on or about June 9, 1965, approximately one month prior to the date of the letter.

18. On or about July 9, 1965, promptly upon receipt of the aforesaid letter dated July 7, 1965, plaintiff Paul E. Sullivan requested in writing of defendant Little Hunting Park, Inc. a postponement of the aforesaid expulsion hearing to a date mutually convenient to all the parties in order to permit said plaintiff to retain the services of counsel of his choice to represent him at said hearing, and said plaintiff also requested a statement from said corporation setting forth in reasonable detail that conduct on his part which was alleged to be the apparent cause for his expulsion from said corporation.

19. Defendant Little Hunting Park, Inc. arbitrarily and unreasonably refused to postpone the scheduled expulsion hearing as requested by plaintiff Paul E. Sullivan in order

to permit said plaintiff to have counsel of his choice represent him at said hearing, and arbitrarily and unreasonably refused to furnish said plaintiff a statement setting forth in reasonable detail that conduct on his part which was alleged to be the apparent cause for his expulsion from said corporation; said refusals persisted until after said plaintiff had invoked the processes of this Court by filing an action herein (*Paul E. Sullivan v. Little Hunting Park, Inc.*, Chancery No. 21663) to compel said corporation to grant said plaintiff's request; whereupon the corporate defendant entered into a stipulation in open court in compliance with the plaintiff's requests.

20. On August 17, 1965, plaintiff Paul E. Sullivan attended a "hearing" held by the Board of Directors of defendant Little Hunting Park, Inc. at which there was discussion of conduct allegedly engaged in by said plaintiff and which allegedly constituted the grounds for his proposed expulsion.

21. On or about August 28, 1965, plaintiff Paul E. Sullivan received a letter dated August 27, 1965, from defendant Little Hunting Park, Inc. advising him of his expulsion from said corporation; tendered with said letter was a check covering the amount of the then current "sale price" of said plaintiff's two memberships.

COUNT I

22. The plaintiffs repeat and reallege, as part of this cause of action, each and all of the allegations of fact contained in paragraphs 1-21 inclusive of this complaint, with like effect as if herein fully repeated.

23. The action of defendant Little Hunting Park, Inc. and its directors in expelling plaintiff Paul E. Sullivan from said corporation and in revoking his two memberships was arbitrary and capricious, was contrary to the provisions of the Certificate of Incorporation and By-Laws of said corporation, was contrary to law and public policy, and was motivated by the malice and personal animosity of the defendant directors of said corporation.

24. As a result of the aforesaid arbitrary and malicious action of defendant Little Hunting Park, Inc. and its directors in expelling plaintiff Paul E. Sullivan from said corporation, said plaintiff and plaintiff Flora L. Sullivan have been wrongfully divested and continue to be wrongfully divested of valuable property rights, to wit:

a. the value, desirability and attractiveness for sale or rental purposes of each of the two parcels of real estate owned by said plaintiffs which are located at 6810 Quander Road and 7113 Coventry Road, Alexandria, (Fairfax County), Virginia, are impaired and diminished by the inability of said plaintiffs to transfer or assign to a prospective purchaser or lessee of said premises a membership in defendant Little Hunting Park, Inc., and the inability of said plaintiffs to assure any prospective purchaser or lessee of said premises that such a membership will be available for purchase from the defendant corporation, in view of the restriction on the number of memberships permitted under the By-Laws of said corporation;

b. plaintiff Paul E. Sullivan has been wrongfully deprived of the cash value of membership certificates numbered 290 and 925, which may, under the By-Laws of said corporation, be sold by the corporation upon the expulsion of a member, and which while they were owned by said plaintiff, could be transferred or assigned for good and valuable consideration;

c. plaintiff Paul E. Sullivan has been wrongfully deprived of the value of his present and future interests and rights with respect to the property and assets of defendant Little Hunting Park, Inc.

25. As a result of the aforesaid arbitrary and malicious action of defendant Little Hunting Park, Inc. and its directors in expelling plaintiff Paul E. Sullivan from said corporation, said plaintiff and his wife and children have been:

a. wrongfully deprived and continue to be wrongfully deprived of the use of valuable and healthful

recreation facilities, including the swimming pool maintained and operated by said defendants, and have thereby suffered damage to their physical and psychological well-being, and have suffered diminishment of the value, desirability and attractiveness of the home and property which plaintiffs Paul E. and Flora L. Sullivan own at 7113 Coventry Road, Alexandria, (Fairfax County), Virginia, and in which said plaintiffs and their children reside;

b. subjected to public embarrassment, humiliation and loss of social prestige in the community.

26. The defendants have intentionally and maliciously inflicted emotional harm, and have intentionally by their acts and words defamed plaintiff Paul E. Sullivan and his wife and children with resulting serious and substantial injury to their reputation and status in the community.

COUNT II

27. The plaintiffs repeat and reallege, as part of this cause of action, each and all of the allegations of fact contained in paragraphs 1-5 and 8-15 inclusive of this complaint, with like effect as if herein fully repeated.

28. The defendants' action of refusing to approve the assignment of Little Hunting Park, Inc. membership No. 290 from plaintiff Paul E. Sullivan to T. R. Freeman, Jr., lessee, solely because said lessee and his wife and children are members of the Negro race, and the continuing practice or policy maintained by said defendants of relying on race or color as a basis for granting or withholding approval of the assignment of, transfer of, or admission to, membership in Little Hunting Park, Inc. are contrary to law, and null and void, because such action, practice or policy:

- a. in an unreasonable restraint on the alienation of memberships in said corporation;
- b. does not bear a reasonable relationship to the legitimate interests of said corporation;
- c. is arbitrary, capricious and contrary to public policy;

d. is an unlawful racial restriction on the alienation of the premises owned by plaintiffs Paul E. and Flora L. Sullivan which are located at 6810 Quander Road and 7113 Coventry Road, Alexandria, (Fairfax County), Virginia, and appurtenances thereto.

e. is an unlawful racial restriction on the alienation of plaintiff Paul E. Sullivan's present and future interests and rights with respect to the property and assets of defendant Little Hunting Park, Inc.

f. cannot be recognized as valid by this Court in violation of the rights of the plaintiffs under the Due Process and Equal Protection clauses of the Fourteenth Amendment to the Federal Constitution and statutes of the United States.

DAMAGE IS CONTINUING AND IRREPARABLE

29. The damage to the plaintiffs, as a result of the foregoing conduct by the defendants, is continuing and irreparable, and the plaintiffs have no adequate remedy at law.

PRAYER

WHEREFORE, the plaintiffs demand:

(1) That the defendants, their agents and servants, be ordered forthwith by this Court to reinstate plaintiff Paul E. Sullivan to full membership in Little Hunting Park, Inc., to reinstitute the effectiveness of membership certificates numbered 290 and 925, and to restore to said plaintiff all rights and privileges associated with membership in said corporation, including, but not limited to the use by said plaintiff and members of his family of the recreation facilities, including the swimming pool, maintained and operated by said defendants.

(2) That the defendants, their agents and servants, be restrained and enjoined from refusing to approve the assignment or transfer of Little Hunting Park, Inc. membership No. 290 from plaintiff Paul E. Sullivan to T. R. Freeman, Jr., lessee.

(3) That the defendants, their agents and servants, be ordered forthwith by this Court to approve the assignment of Little Hunting Park, Inc. membership No. 290 from plaintiff Paul E. Sullivan to T. R. Freeman, Jr., lessee.

(4) That the defendants, their agents and servants, be restrained and enjoined from relying on race or color as a factor in granting or withholding approval of the assignment or transfer of memberships in Little Hunting Park, Inc., or as a factor in granting or withholding approval of applications for membership in said corporation.

(5) Judgment against the defendants jointly and severally in the sum of \$15,000.00 as well as costs and counsel fees.

(6) Such other relief as is just and proper.

(7) That the defendants answer under oath.

Paul E. Sullivan

Flora L. Sullivan

By Counsel

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Joseph V. Gartlan, Jr.
3507 Woodside Road
Alexandria, Virginia

Counsel for Plaintiffs

State of Virginia :
County of Fairfax : ss

Paul E. Sullivan and Flora L. Sullivan, being duly sworn, depose and say they reside at 7113 Coventry Road, Alexan-

dria, (Fairfax County), Virginia, that they have read the foregoing complaint and know the contents thereof and that the facts set forth therein are true to the best of their knowledge and belief.

Paul E Sullivan

Flora L. Sullivan

Subscribed and sworn to before me this day of 1966.

Notary Public

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, Jr., an adult,
 LAURA FREEMAN, an adult, and
 DALE L. FREEMAN, a minor,
 DWAYNE L. FREEMAN, a minor,
 who sue by and through T. R. FREEMAN, Jr.
 their father and next friend
 6810 Quander Road
 Alexandria, (Fairfax County), Virginia
 Plaintiffs,

v.

In Chancery
 No. 22752

LITTLE HUNTING PARK, INC., and

MRS. VIRGINIA MOORE
 6417 Olmi-Landrith Drive
 Alexandria, (Fairfax County), Virginia

RONALD L. ARNETTE
 7019 Canterbury Lane
 Alexandria, (Fairfax County), Virginia

S. LEROY LENNON
 2616 Woodlawn Lane
 Alexandria, (Fairfax County), Virginia

RAYMOND R. RIESGO

7120 Coventry Road

Alexandria, (Fairfax County), Virginia

MRS. MARJORIE MADSEN

6511 Cygnet Drive

Alexandria, (Fairfax County), Virginia

WILLIAM J. DONOHOE

7037 Quander Road

Alexandria, (Fairfax County), Virginia

OSKAR W. EGGER

7003 Stanford Drive

Alexandria, (Fairfax County), Virginia

MILTON L. JOHNSON

6417 Bluebill Lane

Alexandria, (Fairfax County), Virginia

individually and as directors of Little
Hunting Park, Inc.,

Defendants.

BILL OF COMPLAINT

To the Honorable, the Judge of the Circuit Court of Fairfax County:

Your plaintiffs respectfully represent as follows:

1. That the plaintiffs T. R. Freeman, Jr. and Laura Freeman are husband and wife, and Dale L. Freeman, age 6, and Dwayne L. Freeman, age 5, are their sons.

2. Defendant Little Hunting Park, Inc. is a corporation incorporated in 1954 under the laws of Virginia for the purpose of maintaining and operating a community recreation facility and swimming pool for the benefit of residents and former residents of the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia.

3. The defendants Mrs. Virginia Moore, Ronald L. Arnette, S. Leroy Lennon, Raymond R. Riesgo, Mrs. Marjorie Madsen, William J. Donohoe, Oskar W. Egger and Milton L.

Johnson were members of the Board of Directors of defendant Little Hunting Park, Inc. at times here pertinent.

4. On February 1, 1965, plaintiff T. R. Freeman, Jr. and Paul E. Sullivan (lessor) entered into a deed of lease whereby the lessor demised to said plaintiff for the term of one year certain property described in said lease as "the dwelling located at 970 Quander Road, Bucknell Manor, Alexandria 6, Virginia, 22306, and the Little Hunting Park, Inc. pool share No. 290," for a rent of \$1,548.00 payable in twelve monthly installments of \$129.00. The deed of lease between said plaintiff and the lessor was extended in identical terms for an additional year by the execution of a renewal instrument on February 1, 1966.

5. On or about February 1, 1965, the plaintiffs moved their personal and household possessions into the aforesaid dwelling, and they have since resided at that location.

6. In May 1965, the lessor, pursuant to his contractual obligation under the aforesaid deed of lease with plaintiff T. R. Freeman, Jr., performed all necessary acts prescribed by the Certificate of Incorporation and By-Laws of the defendant corporation, to obtain approval by the Board of Directors of said corporation of the assignments of Little Hunting Park, Inc. membership No. 290 to said plaintiff.

7. Plaintiff T. R. Freeman, Jr., in every manner required by the Certificate of Incorporation and By-Laws of defendant Little Hunting Park, Inc. has taken all of the necessary steps to qualify himself as an assignee of said membership No. 290.

8. Plaintiff T. R. Freeman, Jr. and his wife and children are members of the Negro race.

9. Defendant Little Hunting Park, Inc. and its Board of Directors, have refused to approve, and continue to refuse to approve, the assignment of membership No. 290 from the lessor to plaintiff T. R. Freeman, Jr. solely because of the race or color of said plaintiff and his wife and children.

10. The defendants, by refusing to approve, and continuing to refuse to approve, the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. have denied and continue to deny, to said plaintiff and his wife and children the use of the recreation facilities, including the swimming pool, maintained and operated by said defendants.

11. The defendants, by refusing to approve, and continuing to refuse to approve, the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. have wrongfully interfered with and prevented the performance of, and continue wrongfully to interfere with and prevent the performance of, the deed of lease entered into on February 1, 1965, and renewed on February 1, 1966, between the lessor and said plaintiff.

12. The defendants, by refusing to approve, and continuing to refuse to approve, the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. have wrongfully deprived, and continue wrongfully to deprive, said plaintiff and his family of the full use and quiet enjoyment of the leasehold estate demised to said plaintiff by the lessor.

13. The defendants' action of refusing to approve the assignment of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr. solely because said plaintiff and his wife and children are members of the Negro race, is null and void, since said refusal

- a. is an unreasonable restraint of the alienation of memberships in said corporation;
- b. does not bear a reasonable relationship to the legitimate interests of said corporation;
- c. is arbitrary, capricious and contrary to public policy;
- d. is an unlawful racial restriction on the alienation of the premises owned by the lessor located at 6810 Quander Road, Alexandria, Virginia, and appurtenances thereto;

e. is an unlawful racial restriction on the alienation of the lessor's present and future interests and rights with respect to the property and assets of defendant Little Hunting Park, Inc.;

f. cannot be recognized as valid by this Court in violation of the rights of the plaintiffs under Due Process and Equal Protection clauses of the Fourteenth Amendment to the Federal Constitution and statutes of the United States.

14. As a result of the foregoing wrongful conduct by the defendants, plaintiff T. R. Freeman, Jr. and his family have suffered diminishment of the value, desirability and attractiveness of the leasehold estate demised to said plaintiff by the lessor; said plaintiff's right to alienate said leasehold estate by subletting or assignment has been wrongfully interfered with; said plaintiff and his wife and children have been wrongfully deprived of the use of valuable and healthful recreation facilities with resulting damage to their physical and psychological well-being; and said plaintiff and his wife and children have been subjected to embarrassment, humiliation, indignity and loss of social prestige in the community.

15. The defendants have intentionally and maliciously inflicted emotional harm, and have intentionally, by their acts and words, defamed plaintiff T. R. Freeman, Jr. and his wife and children with resulting serious and substantial injury to their reputation and status in the community.

16. The damage to the plaintiffs, as a result of the foregoing acts by the defendants, is continuing and irreparable, and the plaintiffs have no adequate remedy at law.

WHEREFORE, the plaintiffs demand:

(1) That the defendants, their agents and servants, be enjoined from refusing to approve the assignment or transfer of Little Hunting Park, Inc. membership No. 290 to plaintiff T. R. Freeman, Jr.; and further, from interfering with, and depriving, said plaintiff and members of his family of the full use and quiet enjoyment of the leasehold

estate demised to said plaintiff by Paul E. Sullivan, lessor, by denying to said plaintiff and members of his family the use of the recreation facilities, including the swimming pool, maintained and operated by said defendants.

(2) That the defendants, their agents and servants, be ordered forthwith to approve the assignment of Little Hunting Park, Inc. membership No. 290 from the lessor to plaintiff T. R. Freeman, Jr.

(3) That any restriction based on race or color on the assignment or transfer of Little Hunting Park, Inc. membership No. 290 be declared null and void as to plaintiff T. R. Freeman, Jr.

(4) Judgment against the defendants jointly and severally, in the sum of \$15,000.00, as well as costs and counsel fees.

(5) Such other relief as is just and proper.

(6) That the defendants answer under oath.

T. R. Freeman, Jr.

Laura Freeman

By Counsel

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Counsel for Plaintiffs

State of Virginia :

ss

County of Fairfax :

T. R. Freeman, Jr. and Laura Freeman, being duly sworn, depose and say they reside at 6810 Quander Road, Alexan-

dria, (Fairfax County), Virginia, that they have read the foregoing complaint and know the contents thereof and that the facts set forth therein are true to the best of their knowledge and belief.

T. R. Freeman, Jr.

Laura Freeman

Subscribed and sworn to before me this day of
1966.

Notary Public

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, Jr., et al.,

Plaintiffs,

v.

In Chancery

LITTLE HUNTING PARK, INC., et al.,

No. 22752

Defendants.

AMENDED BILL OF COMPLAINT

To the Honorable, the Judge of the Circuit Court of Fairfax County:

Your plaintiffs respectfully represent as follows:

I.

That on the 14th day of March 1966, they filed in this Court their original bill of complaint against the defendants wherein they set forth two causes of action, one of which asserts the wrongful interference by the defendants with the performance of a deed of lease entered into February 1, 1965, and thereafter renewed, between T. R. Freeman, Jr., as lessee, and Paul E. Sullivan, lessor. The second cause of action alleges that the defendants have wrongfully deprived the plaintiffs of the full use and enjoyment of the leasehold

estate demised to T. R. Freeman, Jr. under the aforesaid lease. The deed of lease underlying the aforesaid causes of action includes in the description of the property demised, in addition to a certain residence, the assignment of membership share No. 290 in the defendant corporation. Subsequent to the making of the lease, the board of directors of said corporation refused to approve the assignment of membership share No. 290 to T. R. Freeman, Jr. The plaintiffs, in their bill of complaint, prayed for injunctive relief and damages arising from the refusal of the directors to approve the assignment of membership share No. 290. And the defendants appeared and through counsel demurred to the said bill on the ground that the defendant corporation is a "private club."

II.

And now, by leave of Court complainants bring this amendment to the bill into Your Honor's Court and respectfully represent:

1. That paragraph 2 of the Bill of Complaint should be deleted and the following paragraph substituted therefor:

"2. Defendant Little Hunting Park, Inc. was incorporated in 1954 under Section 13-220 of Title 13, Code of Virginia, 1950 (1949), for the purpose, as set forth in its Certificate of Incorporation and By-Laws (Exhibits A and B, respectively, attached hereto), of constructing, operating, and maintaining a community park and recreation facility, including a swimming pool, for the benefit of residents and former residents of the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia."

2. That paragraph 6 of the Bill of Complaint should be deleted, and paragraph 7 should be redesignated as paragraph "7C."

3. That new paragraphs designated "6", "7", "7A", and "7B", should be added to the Bill of Complaint to read as follows:

"6. The By-Laws of the defendant corporation provide that there shall be 600 memberships available, and that a person is eligible to be a member and may purchase a membership certificate by making application therefor in writing, if he possesses the following qualifications:

- a. is a resident of, or owner or former owner of a housing unit in, the geographic area defined in the By-Laws of said corporation;
- b. is an adult

"7. The By-Laws of the defendant corporation authorize a member to assign his membership share to an eligible person, to wit, one who possesses the qualifications for membership stated in paragraph 6 hereof.

"7A. Plaintiff T. R. Freeman, Jr., on February 1, 1965, and at all times thereafter, has possessed the qualifications for membership set forth in paragraph 6 hereof, and has therefore been eligible to receive assignment of a membership share in the defendant corporation.

"7B. In May 1965, the lessor pursuant to his contractual obligation under the aforesaid deed of lease with plaintiff T. R. Freeman, Jr., and in accordance with the By-Laws of the defendant corporation, assigned membership No. 290 to said plaintiff by written instrument in the form prescribed by the Board of Directors of said corporation, and thereafter performed all necessary acts prescribed by the Certificate of Incorporation and By-Laws of the corporation, to obtain approval of said assignment by said Board of Directors."

4. That new subparagraphs designated "g" and "h" should be added to paragraph 13 of the Bill of Complaint to read as follows:

"g. is not authorized by and is contrary to the Certificate of Incorporation and By-Laws of said corporation;

"h. is not authorized by and is contrary to applicable provisions of Virginia corporation law."

WHEREFORE, Your complainants pray that they may have such relief as is prayed for in the original bill.

T. R. Freeman, Jr.

Laura Freeman

By Counsel

Robert M. Alexander
1829 Columbia Pike
Arlington, Virginia 22204

Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Counsel for Plaintiffs

State of Virginia :

ss

County of Virginia :

T. R. Freeman, Jr. and Laura Freeman, being duly sworn, depose and say they reside at 6810 Quander Road, Alexandria, (Fairfax County), Virginia, that they have read the foregoing amended bill of complaint and know the contents thereof and that the facts set forth therein are true to the best of their knowledge and belief.

T. R. Freeman, Jr.

Laura Freeman

Subscribed and sworn to before me this day of
1966.

Notary Public

[Certificate of Service Omitted in Printing]

EXHIBIT A

Book 12 Page 189

**CERTIFICATE OF INCORPORATION
OF
LITTLE HUNTING PARK, INCORPORATED**

This is to certify that we do hereby associate ourselves to establish a corporation, not organized for profit in which no capital stock is required or to be issued, under and by virtue of Section 13-220 of Title 13, Code of Virginia, 1950, and of acts amendatory thereof, for the purposes and under the corporate name hereinafter mentioned, and to that end we do by this certificate, set forth as follows:

1. That the name of the corporation shall be "LITTLE HUNTING PARK, INCORPORATED" (herein called the "corporation");
2. The principal office of the corporation shall be at 1015 Duke Drive, Bucknell Manor, Fairfax County, Virginia. (Post Office: Alexandria, Virginia);
3. The purpose of the corporation shall be:
 - a. to construct, operate and maintain a swimming pool and all necessary facilities appurtenant thereto;
 - b. to develop, operate and maintain a community park and playground facilities;
 - c. to lease own and manage real and personal property for community recreation purposes;
 - d. to construct and manage any structures necessary to the foregoing purposes;
 - e. to do any and all things necessary to carry out the above purposes.
4. The affairs of the corporation shall be managed by a Board of Directors, consisting of nine persons. The first Board of Directors shall consist of the persons named in paragraph five. Thereafter the Board of Directors shall be elected at an annual meeting by a majority of the members

of the corporation present. Directors shall serve for a term of three years or for such terms as may be specified in the by-laws and shall serve in any event until their successors are elected and qualified. Vacancies on the Board occurring during a term shall be filled by the Board of Directors in accordance with the by-laws of the corporation. The Board of Directors shall have the power to adopt by-laws for the government of the corporation and to amend, alter, and repeal the same from time to time. By-laws shall be valid until rejected by the majority of the voting members present at a duly called meeting.

5. The names and residences of the officers and directors who are for the first year to manage the affairs of the corporation are as follows:

OFFICERS

M.H. Schwartz, President	1015 Duke Drive Alexandria, Virginia
Preble Staver, First Vice President	949 Swarthmore Drive Alexandria, Virginia
Claude R. Yates, Second Vice President	1007 Sweetbrier Drive Alexandria, Virginia
William D. Lincicome, Treasurer	953 Swarthmore Drive Alexandria, Virginia
Mrs. Ann B. Yates, Secretary	1007 Sweetbrier Drive Alexandria, Virginia

DIRECTORS

LaRue M. Courson	1001 Sweetbriar Drive, Alexandria, Virginia
James H. Cowan	905 Dartmouth Drive, Alexandria, Virginia
John A. VanGulick	959 Swarthmore Drive, Alexandria, Virginia
Thomas F. Jones	1037 West Hampton Drive, Alexandria, Virginia
Bernard Kurcias	1019 Quander Road, Alexandria, Virginia
Robert L. Mathes	501 Chelsea Drive, Alexandria, Virginia
Harold J. Peake	945 Swarthmore Drive, Alexandria, Virginia
M. H. Schwartz	1015 Duke Drive, Alexandria, Virginia
Bonnie L. Williams	950 Kenyon Drive, Alexandria, Virginia

6. The period for the duration of the corporation shall be unlimited.

7. The amount of real estate which the corporation may hold at any one time shall not exceed 500 acres.

IN WITNESS WHEREOF, the following incorporators have signed this certificate as of the 23rd day of November, 1954, and affixed their seals thereto.

/s/ M. H. Schwartz [Seal]

/s/ Bonnie L. Williams [Seal]

/s/ LaRue M. Courson [Seal]

COMMONWEALTH OF VIRGINIA)

)

CITY OF ALEXANDRIA)

I, the undersigned, a notary public in and for the City aforesaid do hereby certify that M. H. Schwartz, LaRue M. Courson and Bonnie L. Williams, whose names are signed to the above Certificate of Incorporation bearing date on the 23rd day of November, 1954, have acknowledged the same before me in my City aforesaid.

Given under my hand this 23rd day of November, 1954.

My commission expires November 3, 1957.

/s/ Charlotte C. Bailey
Notary Public

CIRCUIT COURT OF THE COUNTY OF FAIRFAX CERTIFICATE

I, Paul E. Brown, Judge of the above styled Court hereby certify in accordance with Section 13-222 of the Code of Virginia (1950 edition) as follows:

1. That M. H. Schwartz, LaRue M. Courson and Bonnie L. Williams, have this day presented me a proposed Certificate of Incorporation for a corporation not organized for profit in which no capital stock is required or to be issued, and the same to be named: "Little Hunting Park, Incorporated", the principal office of which is to be located in Fairfax County, Virginia;

2. That I have ascertained that the persons named above who signed and acknowledged the aforesaid certificate are of good moral character, and suitable and proper persons to be incorporated for the purposes set forth in said certificate; and

3. That in my opinion the aforesaid certificate is signed and acknowledged in accordance with the requirements of Chapter 13 of the Code of Virginia (1950 edition).

Given under my hand this 25th day of November, 1954.

/s/ Paul E. Brown
Judge

EXHIBIT B

LITTLE HUNTING PARK, INCORPORATED FAIRFAX COUNTY, VIRGINIA

REVISED BY-LAWS

April 18, 1961

ARTICLE I - Name

The name of this organization shall be Little Hunting Park, Incorporated, hereinafter to be referred to as the Corporation.

ARTICLE II - Purpose

The purpose of the Corporation shall be to own (or lease), construct, develop, operate, maintain and manage suitable facilities for the safe and healthful recreation of the Corporation's members, said facilities to include a swimming pool, a park, and such other appurtenances as the Corporation may deem desirable.

ARTICLE III - Membership

Section 1. Membership in the Corporation is—

a. Established by the purchase of a certificate of membership; and

b. Maintained in good standing by the prompt payment of all charges and assessments; and

c. Limited to persons who reside in, or who own, or who have owned housing units in the subdivisions presently defined and known as Bucknell Manor, Beacon Manor, White Oaks, and Bucknell Heights, and such other area(s) as may be authorized by the Board of Directors; and

d. Limited to six hundred (600) in number, except that, exclusive of all other provisions herein, there shall be forty (40) memberships available to residents of the subdivision known as White Oaks over and above the number of White Oaks memberships of record as of May 1, 1955.

Section 2. Each application for membership must be made in writing, and must be approved by the Board of Directors. In the sale or resale of memberships by the Corporation, applications by residents of the subdivisions specifically named in Section 1.c. shall be given prior consideration before all others.

Section 3. Each membership in the Corporation shall be issued to one adult person. If said person be a member of a family unit, the membership, maintained in good standing, shall entitle all members of the family unit to utilize the Corporation's facilities. A family unit is defined as all persons of the same immediate family, including all persons dependent on the holder of a membership and who permanently reside in the same housing unit.

Section 4. Irrespective of the type or number of memberships held by one person, no member shall have more than one vote in the affairs of the Corporation.

Section 5. Memberships may be transferred, or assigned for temporary use, as follows:

a. Permanent transfer to another eligible person may be effected.

b. The use of the membership may be temporarily assigned to eligible persons for periods not to exceed one year. Reassignment to such eligible persons is permissible.

c. Transfers and assignments of memberships must be by written instrument in such form as prescribed by the Board of Directors and are subject to approval by the Board.

Section 6.

a. A membership may, for due cause, and after having been granted an opportunity for a hearing, be suspended for a specified period of time or expelled from the Corporation by a two-thirds (2/3) vote of the entire membership of the Board of Directors.

b. Due cause for suspension or expulsion of a member shall consist of delinquency in payment of any charges and assessments, or of violation of these By-Laws or the Corporation's rules and regulations or of conduct inimicable to the Corporation's members.

c. Suspension or expulsion shall not operate to relieve a member of any liability to the Corporation. In the event of expulsion, the Corporation shall offer the membership for sale at the stated price (Article VI, Section 2.n.). The expelled member shall be paid the balance, if any, of the proceeds of such sale after deducting therefrom any indebtedness due the Corporation, plus a reasonable fee to cover expenses of the sale.

ARTICLE IV - Meetings

Section 1. The annual meeting of the Corporation's members shall be held each year during the month of October at a time and place determined by the Board of Directors.

Section 2. Special meetings of the Corporation's members may be called at any time by the Board of Directors, and shall be called by the Board of Directors within fifteen (15) days of the receipt of the written request of not fewer than twenty (20) members.

Section 3. At least seven (7) days before the date of any annual or special meeting of the members, the Secretary shall cause written notice thereof to be handed to each member in person, or mailed to each member at his address as it

appears on the records of the Corporation. Written notice of a special meeting shall state the purpose of the meeting and no other business may be conducted.

Section 4. Members, in good standing and not suspended, shall be entitled to vote in the affairs of the Corporation as such affairs are brought before a duly held meeting. There shall be not more than one vote per family unit.

Section 5. At an annual or special meeting twenty (20) members eligible to vote shall constitute a quorum. If no quorum is present, an adjournment may be taken to a date not fewer than seven (7) nor more than fifteen (15) days thereafter, and the members present at any such later meeting shall constitute a quorum, regardless of the number of members present. The same notice shall be given for the later meeting as is prescribed in Section 3 (of this Article) for the original meeting.

Section 6. The order of business at annual meetings shall be:

- a. Ascertainment that a quorum is present;
- b. Reading and approval (or correction) of the minutes of the last meeting;
- c. Report of the Treasurer;
- d. Report of the President;
- e. Unfinished business;
- f. New business;
- g. Elections;
- h. Adjournment;

Except that the members assembled at any annual meeting may suspend the above order of business upon a two-thirds (2/3) vote of the members present at the meeting.

Section 7. Except as otherwise provided in the By-Laws, Roberts' Rules of Order Revised) shall be observed in the conduct of all meetings.

ARTICLE V - Board of Directors

Section 1. The Board of Directors shall consist of nine (9) members, all of whom shall be members of the Corporation.

Section 2. The first Board of Directors shall be comprised of three members each elected for a term of one year, three members each elected for a term of two years, and three members each elected for a term of three years. Thereafter, at each annual meeting, there shall be elected to the Board of Directors three members each for a term of three years.

Section 3. Any vacancy on the Board of Directors shall be filled by a majority vote of the remaining Directors; but the Director so elected shall hold office only until the qualification of a Director who shall be elected at the next annual meeting of the members of the Corporation to complete the unexpired term.

Section 4. If a Director fails to attend regular meetings of the Board of Directors for three consecutive months, or otherwise fails to perform any of the duties devolving upon him as a Director, the Board may, after granting the Director an opportunity for a hearing, declare his office vacant and fill the vacancy as herein provided.

ARTICLE VI - Duties of the Board of Directors

Section 1. The Board of Directors shall meet regularly at least once each month. The time and place of such meetings shall be fixed by the Board. The president, or in his absence the Vice-President, may call a special meeting of the Board of Directors, and shall do so upon the written request of three (3) or more Directors. The Secretary shall cause written notice of all meetings of the Board of Directors to be handed to each member of the Board in person, or be mailed to each at his address as it appears on the records of the Corporation. Whenever any notice whatever is required to be given by law, or under the provisions of the certificate of incorporation or of these By-Laws, a waiver

thereof in writing, signed by the person or persons entitled to said notice, whether before or after the time stated therein, shall be deemed equivalent thereto. For any meeting of the Board of Directors, five (5) Directors shall constitute a quorum.

Section 2. The Board of Directors shall be vested with authority for the general direction and control of the affairs of the Corporation. In addition to the duties customarily performed by Boards of Directors, shall:

- a. Act upon all applications for membership;
- b. Fix the amount and character of, and approve, surety bonds required of any persons handling or having custody of funds;
- c. Fill vacancies in the Board of Directors as herein provided;
- d. Employ, fix the compensation, and prescribe the duties of such employees as may, in the discretion of the Board, be necessary;
- e. Establish and approve rules and regulations for the safe and convenient use of the Corporation's facilities, and inform all members and other authorized users of the facilities of such rules and regulations;
- f. Designate and maintain a registered office and a registered agent;
- g. Authorize and supervise investments of the Corporation;
- h. Designate the depository or depositories for funds;
- i. Fix the amount of all charges and assessments payable by the members of the Corporation, as well as fix the amount of any fees for use of the Corporation's facilities by non-members;
- j. Call annual and special meetings of the members of the Corporation, as herein provided, and establish the time and place of such meetings;

k. Constitute and appoint committees, and define the duties and powers of the same;

l. Cause the books of the Corporation to be audited annually by auditors selected by the Board, such audit to be performed by persons who shall neither be Directors nor Officers of the Corporation;

m. Deliver to each member a written report of the affairs of the Corporation after the end of each fiscal year;

n. Establish, from time to time, the stated price at which memberships will be offered for sale or resale by the Corporation.

Section 3. In addition to the powers provided herein, the Board of Directors shall have such other powers, not inconsistent with these By-Laws or existing statutes, as are necessary for the efficient operation and management of the Corporation.

ARTICLE VII - Officers and Their Duties

Section 1. The Officers of the Corporation shall be a President, a Vice-President, a Treasurer, and a Secretary, all of whom shall be elected by the Board of Directors, the President being elected from their number. Unless sooner removed as herein provided, officers shall be elected at the first meeting of the Board of Directors following the annual meeting of the members, to hold office from January 1st of the next succeeding year, for a term of one (1) year or until the election and qualification of their respective successors.

Section 2. The President shall:

- a. Be the administrative officer of the Corporation;
- b. Preside at meetings of the members and at meetings of the Board of Directors;
- c. Perform such other duties as customarily appertain to the office of President or as he may be directed to perform by resolution of the Board of Directors not inconsistent with these By-Laws or existing statutes.

Section 3. The Vice-President shall have and exercise all the powers, authority, and duties of the President during the absence or disability of the latter.

Section 4. The Treasurer shall:

a. Have custody of all funds, securities, valuable papers, and other assets of the Corporation, subject to such limitations and control as may be imposed by the Board of Directors;

b. Provide and maintain full and complete records of all the assets and liabilities of the Corporation;

c. Prepare and submit to the Board of Directors, at times specified by same, financial statements showing the progress and condition of the Corporation.

d. Prepare such financial reports and tax returns as are required by law.

Section 5. The Secretary shall prepare and maintain full and correct records of all meetings of the Board of Directors and of the members of the Corporation, including complete returns of all elections conducted in such meetings. He shall give or cause to be given, in the manner herein prescribed, proper notice of all meetings of the members; and he shall conduct all correspondence pertaining to his office.

Section 6. In addition to the specific enumerated duties of Officers as prescribed herein, any Officer shall perform such other duties as customarily appertain to his office or as he may be directed to perform by resolution of the Board of Directors not inconsistent with these By-Laws or existing statutes.

ARTICLE VIII - General

Section 1. The Corporation shall at all times maintain in force planned insurance coverage.

Section 2.

a. Amendments to these By-Laws may be adopted by the affirmative vote of two-thirds (2/3) of the members

of the Board of Directors at any duly held meeting thereof. Amendments thus adopted shall be effective until and unless they be rejected by majority vote of the members present and voting at a duly held Corporation meeting. Members of the Corporation shall be given proper notice of any and all amendments adopted by the Board of Directors, such notice to be given within thirty (30) days of adoption of an amendment.

b. Amendments to these By-Laws may be adopted by the affirmative vote of two-thirds (2/3) of the members present and voting at a duly held meeting of the Corporation.

Section 3. In addition to any other provision(s) in these By-Laws, any Director or Officer of the Corporation may be removed from office by the affirmative vote of two-thirds (2/3) of the members present at a special meeting held for the purpose, but only after an opportunity to be heard has been given him.

Section 4. When any Officer is absent, disqualified, or otherwise unable to perform the duties of his office, the Board of Directors may designate another member of the Corporation to act temporarily in his place.

Section 5. Reports to the Board of Directors by any duly appointed committee shall be presented in writing, signed by the acting chairman and by the acting secretary, if any, of such committee; and all such reports shall become a part of the permanent records of the Corporation.

Section 6. All books of account, minutes of meetings, committee reports, and other records of this Corporation shall be available to the members of the Corporation.

Section 7. Each member of the Corporation shall be provided with a copy of these By-Laws without specific charge for same.

This is to certify that the attached copy of the revised By-Laws of Little Hunting Park, Inc. is as submitted by the Ad Hoc Committee for By-Laws Revision comprised of

H. J. Peake, Chairman, L. M. Courson, and W. D. Lincicone, as such revision was considered, revised further and adopted by the Board of Directors at a regular monthly meeting, held at 921 Cornell Drive, Alexandria, Virginia, on April 18, 1961, and the same is duly recorded in the minutes of the said meeting of that date.

/s/ John R. Hanley
President

Attested:

/s/ Betty A. Armstrong
Secretary

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, an adult, et al

Plaintiffs

v.

In Chancery

No. 22751

LITTLE HUNTING PARK, INC., et al

Defendants

ANSWER AND GROUNDS OF DEFENSE

Comes now the defendants, Little Hunting Park, Inc., Mrs. Virginia Moore, Ronald L. Arnette, S. Leroy Lennon, Raymond R. Riesgo, Mrs. Marjorie Madsen, William J. Donohoe, Oskar W. Egger and Milton L. Johnson and in answer to and as grounds of defense to the bill of complaint, do state as follows:

1. That they admit the allegations contained in paragraph 1.
2. That they deny the allegation as contained in paragraph 2. Little Hunting Park, Inc. is a Virginia corporation organized as a private membership club and is not a community facility.

3. That they admit the allegations contained in paragraph 3.

4. That they admit that the plaintiff resided at 6810 Quander Road, but are without sufficient information as to the period of residence or the ownership of such property.

5. That they admit the allegations contained in paragraph 6.

7. That they admit that a proper form was executed to assign a second membership to the plaintiff, Sullivan, but are without sufficient knowledge to admit or deny the consideration or terms by which such membership was transferred to Sullivan as alleged in paragraph 7.

8. That they are without sufficient knowledge to admit or deny the allegations contained in paragraphs 8, 9 and 10.

9. That they, in reference to paragraph 11, admit that someone deposited \$37.00 with the bank of the defendant, Little Hunting Park, Inc. and do further admit that the name of T. R. Freeman, Jr. was submitted for approval as an assignee of membership privileges to the Board of Directors of the corporation.

10. That they admit the allegation contained in paragraph 12.

11. That they admit the allegation of paragraph 13.

12. That they admit the allegations contained in paragraph 14.

13. That they deny the allegations contained in paragraph 15.

14. That they admit the allegations contained in paragraphs 16, 17 and 18.

15. That they deny that Little Hunting Park, Inc. acted arbitrarily or unreasonably in refusing to accept a date for said hearing that was more convenient to the plaintiff, Paul E. Sullivan, than to the nine members of the Board of Directors as alleged in paragraph 19. They admit that plaintiff filed an action against the defendant, and the said defendant

stipulated to the plaintiff requests only because the plaintiff was preparing to call a special membership meeting and the plaintiff stipulated that he would abide by the decision of the membership.

16. That they admit that Paul E. Sullivan attended a meeting of the Board of Directors of Little Hunting Park, Inc. on August 17, 1965 as alleged in paragraph 20. At such meeting he was ably represented by counsel of his own choosing, presented witnesses on his behalf, and made a statement in his own behalf.

17. That they admit the allegations contained in paragraph 21.

18. That they adapt their previous answers to paragraph 22.

19. That they deny the allegations of paragraphs 23, 24, 25, 26, 27, 28 and 29.

By way of further defense, your defendants aver:

1. That they are a privately organized club and, in accordance with their by-laws, members may be admitted only upon the approval of the Board of Directors and expulsion from membership shall be by a 2/3 vote of the Board of Directors.

II. That the membership certificate mentioned herein was issued to Paul E. Sullivan and the defendant corporation has had no contractual relationship with the plaintiffs, Flora L. Sullivan, William F. Sullivan, Graciela P. Sullivan, Ana I. Sullivan, Marie Sullivan, M. Dolores Sullivan, M. Monica Sullivan and Brigid Sullivan.

III. That in accordance with its by-laws, the corporation through its Board of Directors had the right to refuse membership or assignment of the use of membership to any applicant if they found such refusal to be in the best interest of the corporation and its members.

IV. That subsequent to the non approval of T. R. Freeman, Jr. for membership, the plaintiff, Paul E. Sullivan did

conduct a harrassment of the Board of Directors and his conduct was inimical to the corporation and its members.

V. That the vote of the Board of Directors in expelling Paul E. Sullivan from membership was unanimous and subsequently the membership, at the annual meeting of the corporation, did unanimously approve the action of the board.

VI. That the defendant, Raymond R. Riesgo, specially pleads that he was not present at either of the Board of Directors meeting held on the 9th day of June, 1965 and on the 17th day of August, 1965 and did not take part in the deliberations of the Board of Directors at those meetings.

VII. Wherefore, your defendants pray that the relief requested by the Bill of Complaint be denied and that they be dismissed with their costs.

LITTLE HUNTING PARK, INC.

By: /s/ S. Leroy Lennon
President

/s/ Oskar W. Egger

/s/ Marjorie M. Madsen

/s/ S. Leroy Lennon

/s/ William J. Donohoe

/s/ Milton L. Johnson

/s/ Raymond R. Riesgo

/s/ Ronald L. Arnette

[Jurat omitted in printing]

[Certificate of Service Omitted in Printing]

DEMURRER
(In Chancery No. 22752)

Comes now the defendants and demur to the Bill of Complaint for the following reasons:

1. The plaintiff, by this action, prays that the court overturn the decision of the Board of Directors and the membership of a private club to grant him the privilege of membership to the private club.

2. The plaintiff asks for a money judgment from the defendants, by reason of their exercising their lawful right in selecting members of their club.

LITTLE HUNTING PARK, INC., et al

By: /s/ John Chas. Harris
Counsel

/s/ John Chas. Harris
Harris & Roark
Counsel for Defendants

[Certificate of Service Omitted in Printing]

DEMURRER [To Amended Complaint]
(In Chancery No. 22752)

Comes now the defendants and demur to the Amended Bill of Complaint upon the following grounds:

I. The Bill of Complaint fails to state sufficient facts to constitute a cause of action against the defendants.

II. The plaintiffs, by their action prays the court to overturn the decision of the Board of Directors of a private club and grant him the privilege of membership in that club.

III. The plaintiff asks for a money judgment of the defendant by reason of their exercising their lawful right in selecting members of their club.

IV. That the plaintiff's right of action is against his lessor under the terms of his lease for the defendants have had no contractual agreement with the plaintiff.

V. That the plaintiffs, Laura Freeman, Dale L. Freeman, and Dwayne L. Freeman are not proper parties to this action.

Wherefore, your defendants pray that this demurrer be sustained without further leave to amend and that they be dismissed with their costs.

LITTLE HUNTING PARK, INC., et al

By /s/ John Chas. Harris
Counsel

[Certificate of Service Omitted in Printing]

ORDER

(In Chancery No. 22752)

This cause came on for hearing on September 9, 1966, on defendants' demurrer to the amended bill of complaint, and upon consideration of argument by counsel, and the Court being of the opinion that the demurrer should be overruled, it is by the Court:

ORDERED, ADJUDGED and DECREED that the demurrer be, and it hereby is, overruled.

It is further ORDERED, ADJUDGED and DECREED that defendants shall have twenty-one (21) days to file a responsive pleading herein, if they so desire.

ENTERED: September 23, 1966

/s/ A. V. Bryan, Jr.
Judge

We ask for this:

Attorneys for Plaintiffs
Attorney for Defendants

ANSWER AND GROUNDS OF DEFENSE**(In Chancery No. 22752)**

1. That they admit the allegations contained in paragraph 1.
2. That they deny the allegations contained in paragraph 2. Little Hunting Park, Inc. is a Virginia corporation organized as a private membership club and not as a community facility.
3. That they admit the allegations contained in paragraph 3.
4. That they admit the plaintiffs reside on Quander Road in Bucknell Manor but are without sufficient information to admit or deny any details of the terms of any lease.
5. That they are without sufficient knowledge to admit or deny the allegations contained in paragraph 5.
6. They deny the allegations contained in paragraph 6 since the requirements for membership are not fully stated. The By-Laws further provide for approval of the Board of Directors.
7. They admit the allegations contained in paragraph 7 but such assignment is subject to the approval of the Board of Directors.
8. They admit the allegations contained in paragraph 7A that Freeman possessed the qualifications outlined in paragraph 6 but deny that he was eligible to membership on these qualifications alone.
9. They admit paragraph 7B.
10. They admit, as to the allegations contained in paragraph 7C, that Freeman filed an application for assignment of membership privileges as required by the By-Laws of the corporation.
11. They admit the allegations contained in paragraph 8.
12. They deny the allegations contained in paragraph 9.

13. That they admit, as alleged in paragraph 10, that they have not approved Freeman for assignment of membership privileges and have denied use of the facilities of the corporation to Freeman, his wife and children since he is not a member of the corporation.

14. That they deny the allegations contained in paragraphs 11, 12, 13, 14, 15 and 16.

By way of further defense, the defendants aver:

I. That they are a privately organized club and, in accordance with the By-Laws of the corporation, membership or membership privileges may be granted only upon the approval of the Board of Directors.

II. That the application for assignment of membership privileges was made by T. R. Freeman, Jr. and the defendants have had no dealings whatsoever with the plaintiffs Laura Freeman, Dale L. Freeman and Dwayne L. Freeman.

III. That the said T. R. Freeman, Jr. did appeal his non-acceptance as an assignee of membership privileges to the entire membership at a special meeting held on the 29th day of July, 1965, and, at such meeting the membership by an overwhelming vote, did sustain the action of the Board of Directors.

IV. That the defendants did not act arbitrarily or maliciously towards the plaintiffs at any time whatsoever.

Now having fully answered, your defendants pray that the relief requested by the Bill of Complaint be denied and that they be dismissed with their costs.

LITTLE HUNTING PARK, INC.

By: /s/ S. Leroy Lennon
President

/s/ Oskar W. Egger

/s/ Virginia Moore

/s/ Ronald L. Arnette

/s/ S. Leroy Lennon

/s/ Marjorie M. Madsen
/s/ Raymond R. Riesgo
/s/ Milton L. Johnson
/s/ William J. Donohoe

[Jurat and certificate of service omitted in printing]

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS

[1] VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al,
Plaintiffs,

v.

In Chancery No. 22751

LITTLE HUNTING PARK, INC.,
et al,

Defendants.

Fairfax, Virginia

Wednesday, March 22, 1967

The above-entitled matter came on for hearing before Judge JAMES KEITH, in Courtroom No. 3, Wednesday, March 22, 1967, at 10:00 o'clock, A.M.

APPEARANCES:

Robert M. Alexander, Esquire
Allison W. Brown, Esquire, and
Peter A. Eveleth, Esquire,
for the Plaintiffs.

John Charles Harris, Esquire,
for the Defendants.

* * *

[7]

PAUL E. SULLIVAN

plaintiff, was called as a witness in his own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your name and address, please? A. Paul E. Sullivan, 7113 Coventry Road, Alexandria, Virginia.

Q. What is your occupation? A. I am an analyst for the Defense Department.

Q. Are you married, Mr. Sullivan? A. I am married.

Q. How many children do you have have, and what is their age range? A. I have seven children. They range from two and one-half to sixteen.

Q. Will you state how you first became a member of the Little Hunting Park, Inc. and at what time? A. Well, we moved into Bucknell Manor, in the house that is now 6810 Quander Road in the last month of 1950, and in May, 1955, when Little Hunting Park, Inc. was being formed, we purchased a share so our children would be able to make use of the facilities of Little Hunting Park, and I retained that membership to this point. Later, we moved from—

[8] Q. Just one second. That share you purchased for what price? A. I believe it was \$150.00.

MR. BROWN: As evidence of Mr. Sullivan's membership, I would like to have the report identified, Share No. 290, as Plaintiffs' Exhibit No. 1 for identification.

THE COURT: Any objection to this, Mr. Harris?

MR. HARRIS: I have no objection, this being a copy of his membership certificate.

(The certificate was marked Plaintiffs' Exhibit No. 1 for identification.)

BY MR. BROWN:

Q. Is this the share you purchased in 1955 or 1954? A. 1955, I believe, yes, May 1955. Yes, that is the same share It is a copy of it.

THE COURT: This is Exhibit No. 1.

(The certificate, marked Plaintiffs' Exhibit No. 1 for identification, was received in evidence.)

BY MR. BROWN:

Q. How long did you live in the house on Quander Road, Mr. Sullivan? A. Until March, 1962. At that point, we moved to the house we now live in on Coventry Road.

[9] Q. What happened to your swimming pool membership? Did you acquire another one with the property? A. When we bought the house on Coventry Road, a swimming pool share was included in the purchase price, and the owner who sold the house, transferred the share.

Q. Was a new share certificate issued to you? A. Yes, a new share certificate.

THE COURT: Is this another pool, or the same pool?

THE WITNESS: That is the same pool.

MR. BROWN: A second membership in the same pool, Plaintiffs' Exhibit No. 2 for identification.

MR. HARRIS: No objection.

THE COURT: Exhibit No. 2.

(The certificate, marked Plaintiffs' Exhibit No. 2 for identification, was received in evidence.)

BY MR. BROWN:

Q. After you obtained the second membership, Mr. Sullivan, what use did you make of these? What did you do to keep them valid? A. Each year we paid the assessment, and the share that we had with our Quander Road house, we assigned to our tenants for their use, and we made use of the one on Coventry Road for our own purposes.

Q. Are you required to pay the assessment each year [10] regardless of whether the membership is used? A. Yes, this is the case.

Q. In leasing the house on Quander Road, then what did you do with that membership as you made the lease? A. I assigned it with the house. It was part of the package deal with the house, the yard and the pool share.

Q. And when did you make the lease to the present tenant in the house, your first lease? A. Dr. Freeman leased

the house from 1 February 1965 for a period of a year, and renewed that on 1 February 1966 for one year and on 1 February 1967, twice subsequently.

MR. BROWN: Mark these as Plaintiffs' Exhibits Nos. 3, 4 and 5 for identification.

Mr. Sullivan, I have here three leases. I will ask you to identify them, please. Are those the leases that you made as of February 1, 1965 and as of February 1st, each of those succeeding years by which you leased your Quander Road property to Dr. Freeman?

THE WITNESS: Yes, they are.

MR. HARRIS: I have no objection.

THE COURT: All right, 3, 4 and 5.

(The leases, marked Plaintiffs' Exhibits Nos. 3, 4, and 5 for identification, were received in evidence.)

[11] BY MR. BROWN:

Q. All right, Mr. Sullivan, will you please read the paragraph in each of these leases, beginning with the word, "Witnesseth?" A. Witnesseth that the said party.

Q. This is the 1961 lease? A. 1965 through 1 February 1966. "Witnesseth that the said party of the first part does demise unto the said party of the second part personal representatives and assigns, the dwelling located at 6810 Quander Road, Bucknell Manor, Alexandria, Virginia, 22306, and Little Hunting Park, Inc. pool share No. 290 from 1 February 1965, for the term of one year from thence next ensuing, and to expire on 1 February 1966, yielding therefor during the said term the rent of \$1,584.00 payable as follows: 12 monthly installments of \$129.00."

THE COURT: You don't need to read any more.

BY MR. BROWN:

Q. And each of those three leases are worded identically insofar as the provisions you have just read? A. Yes, sir, there hasn't been any change at all in the agreement.

MR. BROWN: Will the record show that those three leases were admitted into evidence?

After you had leased your house on Quander Road to Dr. Freeman, will you state what you did thereafter to carry

[12] out your contractual obligation to him, so far as the share was concerned?

THE WITNESS: Sometime in late April when the assessments were sent out, I filled out a card for Dr. Freeman and his family, and he signed it, affirming he was a bona fide tenant. We forwarded that with the assessment for the year to, I believe it was the Mount Vernon Bank, which was acting as the collection agent.

BY MR. BROWN:

Q. And you paid the assessment that year for how much money? A. I believe it was \$37.00.

MR. BROWN: Plaintiffs' Exhibit No. 6.

MR. HARRIS: No objection.

BY MR. BROWN:

Q. Mr. Sullivan, is this a photo copy of the form that is required by the board of directors of the association which you used in 1965 to affect the assignment of your share to Dr. Freeman? A. Yes, this is a photo copy.

MR. BROWN: May this be admitted into evidence?

THE COURT: No. 6.

(The photo copy, marked Plaintiffs' Exhibit No. 6 for identification, was received in evidence.)

[13] BY MR. BROWN:

Q. What happened, Mr. Sullivan, subsequent to your making out this assignment form? Did the board of directors approve the assignment? A. I received a letter, and I believe it was the 25th of May, which was signed by Mr. Lennon, who was, I believe, the membership chairman or the chairman of the membership committee, stating that at the regular meeting of the board of directors on the 18th of May, the assignment of my share to Dr. Freeman had been disapproved.

MR. HARRIS: No objection.

BY MR. BROWN:

Q. Is this the letter signed by Mr. Lennon that you received on May 25, 1965, notifying you that the assignment had been disapproved? A. Yes.

MR. BROWN: May this, Plaintiffs' Exhibit No. 7, be admitted into evidence?

THE COURT: All right.

(The letter, marked Plaintiffs' Exhibit No. 7 for identification, was received in evidence.)

BY MR. BROWN:

Q. What did you do, Mr. Sullivan, after receiving Mr. Lennon's letter notifying you of the disapproval of the [14] assignment to Dr. Freeman? **A.** I wrote a letter requesting, stating my confusion at this action since my only share went with this house and only I could assign it to Dr. Freeman, who was my tenant. I was liable for the assessment, and when they proposed to deny the right of use of this share, and I requested that I be given an adequate explanation of it, or that it be revoked promptly because the pool was about to open.

THE COURT: Was he your first tenant?

THE WITNESS: No, three tenants previously.

THE COURT: Had you assigned your membership to them?

THE WITNESS: The previous tenant, I had. The tenant before that wasn't really in the house long enough to make use of it.

THE COURT: You are going to introduce those formal assignments?

MR. BROWN: Yes, sir. I hadn't gone into it very thoroughly.

I would ask you who was your previous tenant prior to the Freeman.

THE WITNESS: It was a Technician First Class Orvil Stevens.

BY MR. BROWN:

Q. How long did they live in the house? **A.** They moved in August, 1962, and left in the early [15] part of January, 1965.

Q. So they lived there through the summer season of 1963 and 1964? Is that correct? **A.** Yes, that is right.

Q. Did you assign your pool membership to each of them during those two years? **A.** Yes.

THE COURT: Was it approved by the board?

THE WITNESS: I don't believe they went through the form of approval, because they had adopted the rule you could assign only to tenants. I am not certain of that. I believe it was the way it was.

MR. BROWN: If Your Honor please, if I am correct, the record we will show later, and I don't think there is any disagreement, that it has always been a requirement of the association that assignments be approved by the board of directors. It has always been in the bylaws of the association.

THE COURT: All right.

BY MR. BROWN:

Q. To go back for a moment, Mr. Sullivan, to the Stevens, the assignment you made to your tenants, Stevens. Am I correct in saying that the assignment was not disapproved by the board of directors? The Stevens made use of the assigned membership the summers of 1963 and 1964. Is that true? [16] A. That is true.

Q. I would like to show you what has been identified as Plaintiffs' Exhibit No. 8, and ask, is that a carbon copy of the letter you sent to Mr. Lennon on May 25, 1965? A. Yes, that is.

Q. Would you read the last paragraph, please? A. "I want to state that although I have known Mr. Freeman only since his arrival in Washington toward the end of January, this year, I have developed a high regard for him and his family. I know of nothing that could make him less desirable than our previous tenants as members of Little Hunting Park and I fail completely to understand the board's action.

"Since the pool is due to open only in a few days, I am sure you will give this matter full consideration."

MR. BROWN: Thank you. May this be introduced into evidence as Plaintiffs' Exhibit No. 8?

THE COURT: Admitted without objection.

(The letter, marked Plaintiffs' Exhibit No. 8 for identification, was received into evidence.)

BY MR. BROWN:

Q. What response did you get from Mr. Lennon to your letter of May 25th, Mr. Sullivan? A. I received a phone call. I am trying to see if I can fix the date. It was around the 26th or 27th of May. He called and asked if he could come by the following evening [17] and discuss my letter which he had received, and I said he might, and that was about all that there was to the conversation.

Q. Was there any discussion in the conversation that you had with Mr. Lennon of the disapproval of the assignment to Dr. Freeman or the reason for it? A. No, this was simply, as I see it, a phone call on his part to set up an appointment for the following day.

Q. What happened thereafter? A. The next evening at the appointed time, I believe it was eight o'clock, Mr. Lennon arrived with Mr. Egger and Mr. Hanley, and I had never met Mr. Lennon or Mr. Hanley. I knew Mr. Egger, and Mr. Egger introduced the two gentlemen.

We sat down in our living room, and Mr. Lennon of the membership committee, indicated Mr. Hanley would serve as a spokesman, and Mr. Hanley spoke for perhaps three or four minutes, perhaps not that long, perhaps as long as two and one-half or three. When he had finished, it seems to me that he had said that the assignment was disapproved because it was disapproved, and I told him I did not think that sounded like an explanation, so he paused and I think he probably took a breath and he said, "We are aware that Dr. Freeman is a negro," and I waited to see what else he had to say. He apparently had nothing further to add to that.

I said, is that the reason, and he nodded and had [18] indicated it was the reason that Dr. Freeman's assignment was disapproved, so I asked if they had considered anything else about Dr. Freeman than this fact, and they said they had not, and I think I said that sounded to me like bald faced prejudice, and he, as I recall, said something to the effect it probably is, and at that point, I said why that is immoral. I was really quite confused.

I did not expect to run into race prejudice in my neighborhood at that time of the year, at that time of the day, to that extent, and I asked him if I understood him correctly, if I had a house guest who was a negro, they might be denied entrance into the pool, and he said, "They might," and I asked him what they would do about Mexicans, Porto Ricans or Chinese, if they would similarly be excluded.

I don't recall I got any sort of an answer to that, and the conversation went on, as I recall. Mr. Egger interpolated that this really had nothing to do with morals. It only had to do with economics and property values, I believe is the phrase he used. I think this was prompted from my saying I was amazed at his being involved in a thing like this.

Mr. Hanley, as I recall, suggested that the board of directors was ready to buy my share, which I assigned to Dr. Freeman. If it was their offer, I rejected it, since I felt selling a share with the condition of racial discrimination attached to it was cooperating in an evil. If I had to [19] pay the price of not cooperating, I would not do it.

However, I questioned whether the action could possibly have been unanimous on the part of the board of directors. Mr. Hanley assured me it was, and I said I thought it was incredible, and he went further to state that its entire membership shared the same view, and I reminded him I was a member and I did not share the view. He treated it as all members minus one, which I still found it very difficult to believe. I believe this was probably the sum of the conversation.

I asked my wife if she had tea, and I offered them tea, and they declined. They stood up and left. I think about that point I thought it was only fair to let them know I was ashamed of them corporately and individually to be involved in a thing like this; that I hoped it would make no difference in our personal relationships whatever they might be. They departed and I shook hands with Mr. Egger, and exchanged a few polite phrases in Spanish, and they went home, and I sat down with my wife to find out what—

Q. What was the purpose of the phrases in Spanish? A.

Mr. Egger is part Mexican and speaks Spanish. My wife is a Guatemalan and speaks Spanish. I have adopted the language to be able to speak a few polite phrases in Spanish.

MR. BROWN: Your Honor, one of our witnesses arrived late, and I just asked him to leave, Mr. Paul Forbes. He has not yet [20] been sworn in.

Mr. Sullivan, I am showing counsel for the defendant certain exhibits to which he has indicated no objections. These exhibits are marked Plaintiffs' Exhibits Nos. 9, 10, and 11, and I will show them to you and ask you if you will tell me if that is what they are. The first one is a letter from Mr. John Charles Harris, counsel for the Little Hunting Park, Inc., addressed to you, dated July 30th and attached to it is a document. Is that correct?

THE WITNESS: Yes.

(The letters were marked Plaintiffs' Exhibits Nos. 9, 10 and 11 for identification.)

BY MR. BROWN:

Q. Will you tell us what the document is, please? A. It characterizes itself as a statement of the facts alleged by the board of directors of Little Hunting Park, Inc. It constituted conduct inimicable to the corporation's members.

Q. What is the other document, Plaintiffs' Exhibit No. 10? A. It is a letter dated August 3, 1965, addressed to Mr. Harris by Mr. Gartlan.

Q. Mr. Gartlan was your attorney, representing you at the time? A. Yes.

[21] Q. And in that letter, is it correct that Mr. Gartlan asked for further specifications or explanation or clarification of the charter [charges] alleged in the document of the issue of July 30th. Is that correct? A. Yes, he requests an itemization of the inadequacies, et cetera.

Q. And Plaintiffs' Exhibit No. 11 is a letter from Mr. Harris to Mr. Gartlan, dated August 9, 1965. Is that correct? A. Yes.

Q. In which he responds to Mr. Gartlan's letter. Is that correct? A. Yes, sir. He said he has consulted with Mrs. Moore and has determined the following answers.

MR. BROWN: Your Honor, these three documents actually constitute a single one in a sense, because they are the basis for the charges against Mr. Sullivan, and I would like to submit them to you at this time.

THE COURT: They will be admitted without further objection as Plaintiffs' Exhibits Nos. 9, 10, and 11.

(The documents were marked Plaintiffs' Exhibits Nos. 9, 10 and 11 for identification and received in evidence.)

BY MR. BROWN:

[22] Q. Mr. Sullivan, in the charges of July 30, 1965, and the letter from Mr. Harris, explaining the charges, there is reference to the May 28th meeting you had when the three gentlemen came to your home. This meeting and what transpired at it constituted the basis for charge No. 3, or allegation No. 3, and also part of charge No. 1 or allegation No. 1. The allegation is made, and I would like to ask you a question concerning it. Did you call any of the three gentlemen who came to your home on May 28th liars? A. No, I did not.

Q. Did you accuse them of being untruthful? A. No, I did not.

Q. The further assertion is that you cast doubt on their veracity. Did you cast doubt on their veracity? A. I don't believe I did. I did express an inability to believe, which I think is perfectly normal. When one is confronted with an incredible situation, does not necessarily in the terms I would use, reflect on the veracity of the person who may relate it that you may find difficult or impossible to believe.

Q. Who else was present during your conversation with these three gentlemen? A. My wife, Flora Sullivan.

Q. How long did the entire conversation last? A. Probably fifteen minutes.

[23] Q. What did you do after the three gentlemen left your home? A. I got out my copy of the Splash to try and figure out of the constellation of figures across the list of officers of the corporation, and I couldn't find Mr. Hanley's name listed anywhere. I placed a call to Mr. Egger,

whom I knew best, and to inquire who Mr. Hanley was. He was out. I identified myself and called Mr. Lennon's house and Mr. Lennon told me Mr. Hanley was a member of the corporation and interested in the matter. It was a very, very brief conversation. I asked for the conversation, [information] which was received, and we got off the phone.

Q. Was anything further said in your conversation with Mr. Egger? A. I didn't talk to Mr. Egger.

Q. Mr. Lennon, I beg your pardon. A. No, I don't believe so, no. I said, hello, said who I was and what I wanted to know, and he gave me an explanation, and I thanked him and we both hung up.

Q. Did you talk to Mr. Egger on the telephone at that time? A. He did call back the following morning, but I had already found out what I wanted to know. There was no point in prolonging the conversation.

Q. I have a letter which has been marked Plaintiffs' [24] Exhibit No. 12 for identification. It is a letter dated June 5th, or a copy of a letter dated June 5th from you and addressed to the members of the board of Little Hunting Park, Inc. Is that the document? Is this a copy of the document? Just answer, yes or no. A. Yes, this is a letter and an enclosure.

Q. And an attached memorandum? A. Yes.

MR. HARRIS: No objection.

MR. BROWN: I would like to introduce this as Plaintiffs' Exhibit No. 12.

THE COURT: Admitted without objection.

(The letter, marked Plaintiffs' Exhibit No. 12 for identification, was received in evidence.)

BY MR. BROWN:

Q. Would you explain the circumstances under which you wrote that letter, Mr. Sullivan, and the attachment? A. Well, on the occasion of that visit on the 28th of May, it had been implied that this visit constituted a response to a letter which I had written requesting the reason or a prompt referral of the disapproval of Dr. Freeman, and I would not receive a reply in the mail, and as I say, I found some of

the statements made incredible, and I felt the people involved ought to have the opportunity of reviewing this [25] communication which had been made to me on the occasion of his visit, and affirming or denying that it constituted a valid communication from the corporation, so I drafted this memorandum for the record, reporting the visit of Mr. Lennon with Mr. Egger and Mr. Hanley, and the communication on that occasion was made to me, so that they might review it and offer any amendments or changes or extending statements which might seem reasonable to it.

Q. You say you drafted it for the record. What do you mean by that? A. This is one of those things. Just out of practice, with no specific individual in mind for the recipient for the memorandum, you make a memorandum for the record and it is a record of an event, an occurrence of one kind or another. In this case, a communication, the minute recording in my office say of a telephone call, and this is why it is entitled, "A memorandum for the record." It is a pat phrase.

Q. Did you say anything, and anything in the letter or memorandum about your contract with Dr. Freeman? A. I would have to review it. I do believe, if this were allowed, this statement that I would be in default of my contractual agreement with Dr. Freeman. I did point this out in one of the letters to the corporation. Whether it was this one or the previous one to Mr. Lennon, I am not certain.

Q. What did you do after sending the June 5th letter? [26] Did you consult with Dr. Freeman at all? Did you talk to anyone else about the whole problem, as it had been developing? A. Dr. Freeman and I are both Catholics, and we live in the territory of St. Louis parish and two of the members of the board of directors, the two of whom I knew, were also members of the St. Louis parish. Since this seemed to me a problem of injustice, we consulted with our pastor, who has been Monsignor Walsh, and his first suggestion was that Dr. Freeman just go ahead and use the pool since the share was outstanding. The dues had been paid. I explained to him how the gate was controlled, and

you had to have a card at the gate, et cetera, and he then suggested that we then, and Dr. Freeman, particularly, meet with the members of the board of directors, so they could see he didn't have horns or a tail, of any particular animal. In his experience in meeting people face to face, they are pretty decent.

MR. HARRIS: I object to hearsay. It is hearsay.

THE COURT: Exclude it as hearsay, Mr. Sullivan, over his objection. It is what somebody else told you.

MR. BROWN: I think the record might show that Father Walsh was excused by the clerk from complying with the subpoena yesterday for medical reasons. We received a message that he is ill and couldn't attend today, pursuant to a subpoena that has been issued.

Were efforts made to meet with the board of directors, [27] Mr. Sullivan, at that point? After you talked to Dr. Freeman, what did you do?

THE WITNESS: Well, Dr. Freeman and I both saw Father Walsh, I believe, on the 8th of May, 8th of June, and we left the rectory around 8:30 or a quarter of nine, and went to Dr. Freeman's house, where he called the president of the corporation to try and set up an appointment to meet with the board.

BY MR. BROWN:

Q. The president being whom? A. Mrs. Virginia Moore.

Q. Who is here in the Courtroom today? A. I believe that is Mrs. Moore, yes, sir.

[27] Q. Did you talk to Mrs. Moore about that time?

A. Yes, as a matter of fact, the following day when I got home that evening, I had been to Dr. Freeman's around eleven o'clock. I found Mrs. Moore had called my house and asked to speak to me. Since it was too late to call that day, I called the following day.

Q. That was what day when you called her back? A. About the 9th of June. I identified myself and asked for Mrs. Moore, or I believe she answered the phone herself. I identified myself.

MR. HARRIS: I can't hear the witness.

THE WITNESS: I have a very bad cold. So I identified [28] myself again, and I believe Mrs. Moore indicated that the board of directors wasn't going to meet with Dr. Freeman, and I believe I possibly paraphrased the thing. You haven't given me the courtesy of an interview, and she indicated this was correct. There would be no interview with Dr. Freeman. I said that I believed Father Walsh would be very disappointed because he suggested this approach. She replied, with some vehemence, Father Walsh didn't mean a thing to her.

The conversation from there, I believe, was primarily on her side, and it wasn't what I would call coherent. It would be very difficult to sort out meaning from feeling in the communication she was making, and I did tell her not to become angry and not to be impolite. When she hung up on me, I really think I was rather relieved because she was getting quite out of hand.

BY MR. BROWN:

Q. Was anything else said during that conversation?

A. Not that I can recall. I said her communication wasn't really clear.

Q. How long did the conversation last? A. Probably about three minutes.

Q. Where is the telephone located where you made the call? A. It is in the kitchen of our house on Coventry Road.

Q. Who else was present when you were talking to [29] Mrs. Moore? A. My wife, I think, was working at the sink, getting supper ready.

Q. Charge No. 4 made against you, allegedly was the basis for your expulsion. It asserts you used abusive language to Mrs. Moore. Did you use any such language? A. No, I did not.

Q. Did you accuse Mrs. Moore of being immoral? A. No, I didn't.

Q. Did you accuse any member of the board of direc-

tors of being immoral? A. No, I didn't.

* * *

Q. * * * Were you notified that action was being taken, on what appeared to be due cause for your expulsion? A. I received a letter around the 9th of July, which was dated the 7th of July.

* * *

[30] THE COURT: Read it all, Mr. Sullivan.

THE WITNESS: "7 July 1965, addressed to Mr. Paul E. Sullivan, 7113 Coventry Road.

"Dear Mr. Sullivan:

"At the June meeting of the Board of Directors your non-acceptance of Board's decision on the assignment of your membership to your tenant on Quander Road, along with the continued harassment of the board members, etc., was discussed at length.

A motion was made and passed unanimously by the seven members of the board present, that since there seems to be due cause for your expulsion from the Corporation in accordance with Article III, Section 6(b), that is, "conduct inimicable to the Corporation's members", a hearing will be granted you at the July meeting which will be held at 9:00 P.M. on Tuesday, 20 July, at the Little Hunting Park, Inc. pool area. At this time you'll be given an opportunity to be heard, after which the board will take [31] final action. Virginia Moore."

At the bottom, it says, "A non-stock, non-profit corporation incorporated in Virginia and dedicated to the building of a finer community."

MR. BROWN: The letter identified as Plaintiffs' Exhibit No. 13, I would like to introduce into evidence.

MR. HARRIS: No objection.

THE COURT: Admitted without objection.

(The letter marked Plaintiffs' Exhibit No. 13 for identification, was received in evidence.)

BY MR. BROWN:

Q. The date that the board met, as reflected in that letter and decided that due cause appeared for your expulsion, was that the same night you had talked to Mrs. Moore on the telephone, so far as you know? A. I understood they held their meeting on 9 June 1965.

Q. What was your reaction, as a government employee and as a Christian in connection with your religious affiliation? A. It is easy to speak in the first place as a Christian member of the church. It had been made quite clear to me over many, many years that racial discrimination is a sin, a matter in the Catholic Church for confession, and in these confessions, one does penance for having done something. To be put in a position where I was expected to [32] collaborate or apparently suffer with racial discrimination.

I couldn't see that I really had any choice. To collaborate in racial discrimination is something that I cannot conscientiously do. The other evil would have to be tremendously great to make this the lesser of the two evils, if I can put this in as an illustration, so naturally my conscience was involved, and as a federal employee in the government, and having taken a very forthright stand on non-discrimination, I felt that to even appear to collaborate with a discriminatory policy, had a depressing effect on my career, as a practical problem, and the problem of conscience however was the over-riding one.

I do believe people manage to obscure the practice. They make a practice of racial discrimination here and there, and still make a career in the government. However, I wanted to be honest both with my employer and with myself and with my tenant, and with my neighbors.

Q. Do you work for an agency of the federal government, which is under the general jurisdiction of the Department of Defense? A. I do.

Q. I would like to show you a document marked for identification as Plaintiffs' Exhibit No. 14. Will you explain what it is, sir? A. It is a statement that Lyndon B. Johnson made to the [33] Cabinet, which was sitting as a body.

MR. HARRIS: I object, being hearsay.

THE COURT: Objection sustained.

MR. BROWN: Your Honor, the purpose of this is to show that one of the issues here is Mr. Sullivan's state of mind, whether he was acting out of principle or conscience, or acting out of a desire to be a trouble maker in terms of harassment, and parts of this document and some words we had in mind will show he was acting out of principle, and a mandate which he had received from the employer, the government.

THE COURT: I don't think it is admissible, that paper.

MR. BROWN: I would like to note an exception for the record, please.

Mr. Sullivan, about this time have you received any communications in the course of your employment relating to the subject you felt was involved in this whole matter?

THE WITNESS: As a matter of fact, I believe it was on my very birthday, on the 26th of May that a memorandum had been distributed in the office, which included a statement by President Lyndon Johnson.

MR. HARRIS: I think it is irrelevant.

THE COURT: All right, he has testified to what effect this had on him, if that is anything. Objection overruled.

BY MR. BROWN:

[34] Q. Go ahead. A. I received this memorandum in the office, which contained a statement made by the President to his Cabinet, in which he called upon them to let all employees and all offices in all departments to know that he expected and the government expected them to do all in their power to ensure the equal treatment of every citizen regardless of race, creed or national origin. It is a much longer statement, but it is the way I understood it.

MR. BROWN: Plaintiffs' Exhibit No. 14 was rejected.

What is the position of the views of your church in your

area toward racial discrimination and how you learned about this?

THE WITNESS: From the scriptures, from the pulpit, from leading publications of more or less a religious type, sponsored by Catholic organizations. I would say the first means by which I knew of the church were teachings on social justice and qualified interpretations of it as given in sermons or writings in Catholic magazines or Catholic newspapers, and in talking with clerics who make a point of these things.

BY MR. BROWN:

Q. Have the Catholic bishops in the United States made a study of racial discrimination? A. Yes, they made a series of studies.

[35] Q. What did they say?

THE COURT: No, don't let us say that. Have you read them?

THE WITNESS: Yes, sir.

THE COURT: And are you familiar with all the preachings and teachings of your church?

THE WITNESS: I believe I am.

THE COURT: You believe in them?

THE WITNESS: Yes, sir.

THE COURT: You are effected by them?

THE WITNESS: I believe they bind me in conscience to act as a Christian, yes.

THE COURT: Number them all, and I will put them in evidence, and you can object to them, and I will rule on them, to do it more quickly.

MR. BROWN: I would like the report to identify these, please.

MR. HARRIS: To save the Court's time, we could go over these exhibits, and let me go over them and see what I will stipulate to and what I will object to.

MR. BROWN: These are Plaintiffs' Exhibits Nos. 14, 15, and 16. They consist of two pastoral letters from the bishops in the United States. The third is the statutes of the diocese in Richmond, which contain in them two specific

mandates, and the fourth is a clipping from a newspaper, [36] "The Catholic," by Bishop Russell in Richmond.

THE COURT: Counsel is testifying.

MR. HARRIS: I object to all of them as hearsay.

THE COURT: Objection sustained.

BY MR. BROWN:

Q. What role has this bishop of this diocese played in regard to the subject of racial discrimination in housing?

THE COURT: I don't think that is material. I will sustain your objection to that.

BY MR. BROWN:

Q. Mr. Sullivan, after your June 9th telephone conversation with Mrs. Moore, did you write for any further communication with the board of directors? Specifically, I would like to have identified and show you a letter dated June 12th.

THE COURT: Any objection? It is a letter asking for another meeting. Admitted into evidence.

(The letter, marked Plaintiffs' Exhibit No. 14 for identification, was received in evidence.)

BY MR. BROWN:

Q. Will you read the last paragraph of that letter, Mr. Sullivan, dated June 12th to you from the board of directors? A. As I stated in my letter to the individual Board members, I find the explanation of the [37] Board's action inadequate and I do not accept it. If it is determined that racial discrimination is actually being practiced by Little Hunting Park, Inc., I shall have to consider what implications membership in the corporation may have for my professional career. As you are no doubt aware, the federal government, my employer, has a most positive policy of non-discrimination. I support that policy wholeheartedly, and I cannot permit the sincerity of that support to be put in doubt.

Q. Mr. Sullivan, here is a letter dated June 12th, addressed to you from Mrs. Moore. Would you say that is a reply you received from an earlier letter you had written to her? A. Yes.

MR. HARRIS: No objection.

THE COURT: Admitted.

(The letter marked Plaintiffs' Exhibit No. 15 for identification, was received in evidence.)

BY MR. BROWN:

Q. Several of the charges that have been made against you as the basis for your expulsion, revolve around a letter dated June 25th from you to Reverend Thomas J. Cassidy. Will you explain the circumstances of your writing that letter, Mr. Sullivan? A. As I said, Dr. Freeman had appealed to our pastor for assistance in resolving this problem, and it appeared to [38] me that little or nothing was being done by him to try to help. It was also complicated by the fact that at that time I thought Mr. Tracy, whose name appeared on the list of officers of the corporation, was actually a member of the board. It turned out later, or I became aware he wasn't a member of the board, but a designated representative. Mr. Tracy is a designated member of St. Mary's Parish. Inasmuch as there were two parishes involved, I thought the Catholics were not given the kind of leadership they really were in need of.

I consulted with Father Carl Zeterberg, who was a former pastor. His advice was rather than to write to the bishop, which I had in mind to do, to address myself to Father Cassidy, who was the bishop's representative in the northern area, to address a copy to Father McMahon in Richmond who has a similar parish in that area, and the diocese as I recall told me to be as plain as I could, and he knew my real concern was for these fellow parishoners of mine, as well as racial discrimination.

Q. Is this a copy of the letter of June 25, 1965, addressed to the Reverend Thomas J. Cassidy, which you sent at this time? A. Yes, sir.

MR. HARRIS: No objection.

THE COURT: Admitted.

[39] (The letter marked Plaintiffs' Exhibit No. 16 for identification was received in evidence.)

BY MR. BROWN:

Q. What was Father Cassidy's position in the church? You have addressed him as Director of Catholic Charities in Northern Virginia. Is that correct? A. That is how he was known. He is Director for Northern Virginia. He apparently has this charge from the bishop, to try to permit justice between people of different races.

THE COURT: Take a five-minute recess.

(Whereupon, a short recess was taken, after which the hearing was resumed as follows:)

BY MR. BROWN:

Q. June 25th, Mr. Sullivan, I will leave it there for your reference. I am going to ask you several questions about that letter because four of the charges against you for the expulsion, were based on that letter. I might say that there were in total eleven charges. One of them, if I am not mistaken, and I believe we can agree, that one of the eleven charges was ultimately abandoned, and has not served as the basis for anything further that has transpired in the case. There are ten charges.

MR. HARRIS: That is correct. No. 10, I believe was [40] abandoned.

BY MR. BROWN:

Q. In relation to Charge No. 1, Mr. Sullivan, it is alleged that in the June 25th letter, you accused both members of practicing bigotry and hatred. Do those words appear any place in the June 25th letter? A. No, they don't.

Q. Charge No. 1 also alleges that by means of the June 25th letter, you made certain remarks critical to the board of directors, to one, John Wells. Will you identify John Wells? A. He is the Minister of the Mount Vernon Unitarian Church.

Q. Is that located near the neighborhood where Little Hunting Park is located? A. Yes, it is about a quarter of a mile from the house.

Q. Did you send a copy of your June 25th letter to John Wells? A. I did not.

Q. Did you ever show a copy of it to John Wells? A. No.

Q. This letter, so far as you know, you never sent it to him? A. I never gave him a copy or made its contents known to him in anyway, so far as I know.

[41] Q. Charge No. 5, also relating to the June 25th letter, alleges you accused board members of lacking in Christianity and participating in a real moral evil. Did you anywhere in the letter state that anyone was lacking in Christianity? A. I am most certain that I did not. I will have to read the entire text, that says that I did. It doesn't ring true of the letter I got.

Q. The phrase appeared at the bottom of the letter. You used the phrase, "Real moral evil." What is your understanding of this term, and why did you use it? A. My understanding of this term, "A real moral evil," is a sin, personal sins, and that they have damaging effects on the spiritual lives, and all people are affected by it.

Q. What are you referring to as a real moral evil? Is it a person or a thing? A. It is a practice.

Q. A practice? What practice? A. The practice of racial discrimination.

Q. Charge No. 6 made against you is the basis for your expulsion, asserts or suggests that you send a copy of this to the clergymen, to a clergyman. Who in the charge is identified as, "The employer or the Corporation's President?" Who is that clergyman? A. I understand that Mrs. Moore is employed by Father [42] Wingler of St. Mary's Church.

Q. And is Father Wingler a recipient of the letter identified at the bottom of the letter? A. Yes.

Q. Did you know at the time you sent Father Wingler a copy of the letter that he was the employer of Mrs. Moore? A. I did not.

Q. Were you personally acquainted with Mrs. Moore? A. I actually had never been introduced to Mrs. Moore. I had seen her on several occasions, at meetings, at the hearing, but we never met socially in anyway. As a matter of fact, I believe at the time this letter was written, I had never seen her.

Q. At that time did you know of her religious affiliation,

or anything about it? A. No, as a matter of fact, from the one occasion when I had mentioned Father Walsh's name, and she had retorted with such vehemence, I incorrectly assumed she was not a Catholic.

Q. Have you ever been told in anyway or how in anyway Mrs. Moore's status as an employee of St. Mary's Church, has been adversely affected by your sending a copy of this letter to Father Wingler? A. No, I have never heard of any ill effect it had on Mrs. Moore.

* * *

[45] Q. Charge No. 7, Mr. Sullivan, against you, alleges the basis for your expulsion, asserts that by sending this letter you created a strained relationship between the corporation and a clergyman, who has been identified as Father Walsh, your clergyman. Do you know of anyway in which, or have you ever learned of anyway in which Father Walsh's receipt of a copy of this letter to Father Cassidy created a strained relationship between Father Walsh and the corporation? A. No.

Q. Did you at the time of the hearing, at the time of [46] your expulsion present evidence to the effect no strained relationship had ever been created? A. We did in the form of a letter from Father Walsh.

* * *

MR. BROWN: * * * Mr. Sullivan, did you receive a reply from Father Cassidy to your letter of June 25th to that effect, and I show you a letter of June 29th from Father Cassidy, addressed to you?

[47] THE WITNESS: Yes, I received this letter.

MR. HARRIS: No objection.

BY MR. BROWN:

Q. Would you read the contents of this letter through?

THE COURT: Let the record show, the letter is admitted into evidence without objection.

(The letter marked Plaintiffs' Exhibit No. 17 for identification, was received in evidence.)

THE COURT: Just read the letter.

THE WITNESS: June 29, 1965.

'Mr. Paul E. Sullivan, 71113 Coventry Road, Alexandria, Virginia

"Dear Mr. Sullivan:

'Thank you for your letter of June 25th, detailing your concern about the non-admission of Dr. Freeman to the local swimming pool.

"I believe as you mentioned that the process is educational. In another sense, I must admit, not being aware of the local picture, I am inclined to get acquainted with it before doing anything else. Hence, I would appreciate your sending me copies of the correspondence you have had in this matter.

"I have talked to both Father Walsh and Father [48] Wingler. I was happy to learn that prior to the receipt of your letter, they had conferred about the problem. Father Walsh wanted to set up a meeting with Mrs. Moore, President of the Board, but she is out of town until after July 4th. It seems she recently had an operation, and she used the vacation for recuperation. Until she returns, there isn't much we can do about having her call a special meeting.

"In the meantime, we can go over your correspondence and obtain copies of the constitution and bylaws of Little Hunting Park, Inc. I believe it might be beneficial to give us a chance to look over the situation, read up on the correspondence, et cetera.

"Father Walsh, Father Wingler, and I are in agreement that we can get together on this and work out a solution of the problem. With cordial best wishes, I am

"Sincerely

"William Cassidy

"Copy to Very Rev. Eugene Walsh, Rev. Joseph Wingler, Rev. John J. McMahon."

MR. BROWN: July 1st, too.

MR. HARRIS: No objection.

[49] BY MR. BROWN:

Q. Mr. Sullivan, I have here a letter dated July 1, 1965, addressed to Reverend Thomas J. Cassidy, signed by you, from you, in which you respond to Reverend Cassidy's let-

ter of June 29th. Would you read the second and third paragraphs in that letter, please? A. "I am sorry I misinterpreted Father Walsh's attitude I had no way of knowing he had taken action of any kind. It seemed to me nothing at all was being done. I feel that active visible leadership will be required for even as long as a generation or two to restore justice and charity among all the members of Christ's body and I must confess that I am impatient to see something more than a token gesture in that direction. As a result of this problem with the Board of Little Huting Park, Inc. and our efforts to solve it. I have good reason to believe that the consciences of only a minority of Catholics in this neighborhood have awakened to the fact that racial discrimination is a sin rather than an acceptable custom.

"Thank you for your interest in this problem. I am sure when the injustice of their action is made clear to them, and they see that their fears are without foundation, the majority of the members of the board will do the right thing."

Q. Charge No. 9 made against you as the basis for your expulsion, alleges you used the wording in that letter, the [50] word, "Sin." Will you state what you referred to? What is the phrase? How did you use the word, "Sin" in that letter, in the second to the last paragraph of that letter? A. I have good reason to believe that in the consciences of only a minority of the good Catholics in that neighborhood, that racial discrimination is a sin rather than an established custom. I think that is clear.

Q. Did you accuse, as alleged in Charge No. 9, the members of the board of directors of sin? A. No.

Q. What did you do when you received the letter? You have related that on July 7th, this came out previously in your testimony that on July 8th or 9th, you received a letter, a letter written July 7th. This has previously been entered into evidence, in which the board of directors concluded that there was due cause for expelling you from the association, and you were to be given a hearing on July 20th. What did you do with that letter, or what did you

do thereafter? A. I gave the letter to Mr. Gartlan, who was representing me, because I felt that his was a thing that I needed legal assistance on.

Q. What did Mr. Gartlan do then? A. He wrote a letter to the corporation, requesting that a statement of charges be given us, and requesting that [51] a postponement of the hearing be made so I could have counsel of my choice in this case, because he was scheduled to go on vacation, during the period when this thing was scheduled for a hearing. I believe that was about the main content of the letter.

Q. Did he ask for further information concerning the charges? A. I believe he asked for a statement of what the charges were.

MR. BROWN: Will the record show that No. 18 was admitted into evidence without objection?

(The letter, marked Plaintiffs' Exhibit No. 18 for identification, was received in evidence.)

BY MR. BROWN:

Q. Mr. Sullivan, did you receive a copy of Mr. Gartlan's letter addressed to Mrs. Moore, dated July 9, 1965, identified as Plaintiffs' Exhibit No. 19? A. Yes, sir. This is the copy I received.

MR. HARRIS: No objection.

THE COURT: Admitted.

(The letter, marked Plaintiffs' Exhibit No. 19 for identification, was received in evidence.)

BY MR. BROWN:

[52] Q. Was a response ever received by you to Mr. Gartlan's letter? A. I believe not.

Q. What did you do as a result, or what did your attorney do? A. Mr. Gartlan then filed for an injunction in this Court. I believe it was in this Court, in this Court House at least, to require that I be given a statement of the charges that the postponement of the date of the hearing be granted, so I could have counsel of my choice, and there was a third point which escapes me. I don't recall what it was, that I would be assured of fair procedures in this hearing.

Q. What happened in that Court proceedings? A. We came into Court and a stipulation was entered into in which the corporation agreed to these conditions. This was before Judge Van Dyke.

THE COURT: Agreed to what?

THE WITNESS: To give us a statement of the charges, to give us a postponement of the hearing so I could have counsel of my choice, and to give us, as I recall, some statement as to what the procedures of this hearing which was well defined, would be. There might have been other items, but they escape me.

MR. BROWN: Mr. Harris, can we stipulate that was another [53] cause of action, Sullivan v. Little Hunting Park, Inc.? I don't want to introduce it, but I want to show that it was another action.

THE COURT: Is that available to me to read if I have to?

MR. HARRIS: Yes.

MR. BROWN: That is styled the case of Paul E. Sullivan v. Little Hunting Park, Inc., in Chancery No. 21663. Then is it correct, Mr. Sullivan, as a result of the stipulation that was entered into in Court, as a result of this injunction proceedings, this statement of charges was submitted to you. You had not received a statement of it prior to?

THE WITNESS: That is correct.

BY MR. BROWN:

Q. After receiving these charges and the letters which explain, or the letter which explained the allegations in it, was a hearing thereafter held before the board of directors?

A. Yes, some points required clarification. I believe there was some correspondence to that effect. One of the charges was withdrawn. One was specified in some way, and some points Mr. Gartlan cleared up and a hearing was held on the 17th of August in the office of Harris and Roark.

Q. Will you describe the kind of hearing that was held? [54] What happened? A. Well, in discussions with Mr. Harris apparently before the hearing, Mr. Gartlan advised me we would have no opportunity to cross examine; that

no witnesses apparently were being brought against us; that this was considered to be an opportunity for me to defend myself against these charges, and to disapprove them if I could, and that therefore when we went into Mr. Harris' conference room, the procedure was one in which we introduced our only witness, and then Mr. Gartlan took up in turn the charges, interrogating me and Mrs. Sullivan, if necessary, to elucidate the basis of these charges, and he presented statements from these two reverend gentlemen and from three people who had declined to sign my request for a special meeting, which I had circulated, stating that I had not indeed used abusive or violent language toward them when they declined, and Mr. Gartlan begged for me the opportunity to make a statement, which I did, and I believe Mrs. Sullivan had a few words to say, and Mr. Gartlan summed it up, and we left.

Q. Who was the witness you had at the hearing? A. Mr. James Sutherland, who was a person who alleged to have, or he appeared to state that his call was neither prompted by me or in his view, arranged.

Q. Did Mr. Gartlan request in your behalf that a reporter be present at the hearing? [55] A. He did.

Q. Was that request denied? A. That request was denied by the board.

Q. Did you receive notice thereafter of the board's action? A. Yes, I believe on the 27th of August I received a letter, stating I had been expelled from the corporation.

MR. HARRIS: No objection.

BY MR. BROWN:

Q. This is a letter dated August 27, 1965, addressed to you from Mrs. Moore. Is that the letter you received, notifying you that you were expelled? A. That is right, yes.

THE COURT: Admitted without objection.

(The letter, marked Plaintiffs' Exhibit No. 20 for identification was received in evidence.)

BY MR. BROWN:

Q. With respect to the charges made against you, we have now reviewed quite a number of them, and I have

some questions that pertain to those charges, or others that don't appear in the testimony.

Charge No. 2, and all these charges, when I speak of them, Your Honor, is when they have been explained in Mr. Harris' subsequent letter or allegations on them.

[56] Charge No. 2 is that you instigated and conducted and caused others to instigate and conduct an harassment of the president and board members by numerous unpleasant phone calls. The evidence shows you had three phone conversations during this period. One after the meeting of May 28th at your house when the three gentlemen were at your house, you called a Mr. Lennon to find out who Mr. Hanley was. You called Mr. Egger, telling him you had got the information you were looking for. You had a subsequent phone conversation from Mrs. Moore. Do you recall any other conversations with any other of the board members? A. Yes, sir, I had a conversation with Mrs. Moore on the 14th of June, when, I believe, I was at Dr. Freeman's house, when Mr. Southerland called and said he had intended to attend the board meeting which Mrs. Moore said was to be attended in regard to Dr. Freeman. He called to find out where it was and the time, et cetera.

I was rather surprised to find out the meeting had already been held. I called Dr. Freeman's house, and then I called Mrs. Moore back. I couldn't believe. She assured me that it was held, and how long. I would be informed by mail. I believe that was the sum total of that conversation.

Q. Was that unfriendly? A. I would say very cold.

Q. Your manner? [57] A. I believe the manners on both sides was quite cold. You understand that on the occasion of our previous conversation, I had felt compelled and I had returned Mrs. Moore's call, and she behaved in such a manner, and I wrote her a letter asking her not to call me again, so it was with great reluctance that I called her again.

Q. Did you ask anyone else who was a member of the association, or otherwise, to make phone calls to members of the board of directors? A. No, I have never asked any-

one to make phone calls. I asked people to write letters which I felt had weight in the matter, but I think phone calls are ephemeral things.

Q. Do you know of anyone who made anonymous phone calls during this period, as indicated in one of the letters from Mr. Harris? A. No, I don't.

Q. Did you at any time during that period by means of phone calls, accuse members of practicing hatred and bigotry? A. I don't believe so.

Q. You say Mr. Sutherland made a phone call, and it is indicated in the specifications of the charges that the only caller that the directors were able to identify was Mr. Sutherland. Do you know whether Mr. Sutherland did make a phone call? [58] A. He told me he did.

Q. What did you ask people to write letters about? A. I asked them to write and explain how they felt about this particular action of the board.

Q. Did you ask people generally, or the members of this corporation? A. People I knew. I did not have the membership list. I really didn't know who was a member of the corporation and who wasn't.

Q. Did you ask non-members to write letters? A. No.

Q. Do you know how many wrote letters, actually wrote letters? A. I believe five or six did.

Q. Do you know Miss Mary Simmons, who lived at 5414 Cavalier drive? A. No, I don't know who the lady is.

Q. You understand who Miss Simmons was? A. I understood in 1965. She was a transfer agent for shares in Little Hunting Park, Inc.

Q. Was she an officer of the corporation? A. I don't know.

Q. Was she a director of the corporation? A. I believe she was not.

Q. Did you make a phone call during that period to [59] Miss Mary Simmons? A. I don't believe so.

Q. It is alleged in the answers to interrogatories served on the defendant that Miss Mary Simmons received harass-

sing phone calls. She was one of the members of the board of directors who received harassing phone calls. You say she wasn't a member of the board of directors. Do you know whether she received any harassing phone calls from any of the people you know? A. I never received any harassing or anonymous phone calls except those I received at one time.

Q. Except what? A. I have received harassing phone calls, but I have not asked anyone to make them, or made any myself.

Q. In checking the action of the board of directors in their refusal to permit the assignment of Dr. Freeman, did you seek to call a general membership meeting? A. Yes, I did.

Q. By what authority? A. It is provided in the bylaws that twenty members must request the special meeting for purposes to be outlined in the request for a special meeting.

Q. What did you do pursuant to those bylaws in this regard? A. I drafted it up, a request for a special meeting and [60] proceeded to ask people who were sympathetic to write the corporation.

Q. How many sympathetic members did you ask to have sign it? A. Twenty spaces for names.

Q. Twenty-one. A. Twenty-one including me.

THE COURT: Any objection?

MR. HARRIS: No objection.

THE COURT: Admitted.

(The request marked Plaintiffs' Exhibit No. 21 for identification, was received in evidence.)

BY MR. BROWN:

Q. This is the letter dated July 14th, a photo copy of a letter dated July 14th, requesting a membership meeting of the members of Little Hunting Park, Inc. with signatures shown below it. Is that the letter you mailed, Mr. Sullivan? A. Yes, it is.

* * *

[61] Q. About how many people you circulated that

letter to refused to sign it, Mr. Sullivan? A. Oh, perhaps ten or eleven.

Q. Did you get angry or violent or abusive with people who refused to sign it? A. No, I did not.

Q. Did you ask Mrs. Aileen Winters to sign this letter? A. Yes, I did.

Q. And she refused to do so? A. Yes, sir.

Q. One of the charges against you specifically is No. 8. As explained by Mr. Harris' letter, it concerns your encounter with Mrs. Winters at the time you asked her to sign this letter. Had you known Mrs. Winters previously before you asked her to sign it? A. I had probably known Mrs. Winters as much as ten years, maybe not that long, but about that long. I had known her in the office and in parish activities. I met her husband and we became very close associates in parish matters. Yes, I knew Aileen Winters at home.

Q. Was her husband at home when you called on her?

A. No, Mr. Winters had died in March, 1963.

Q. Had you been a close friend of his? A. Very close when he died.

Q. Mrs. Winters was still a member of your parish? [62] Mrs. Winters is still a member of St. Louis Parish and Father Walsh's secretary, I believe.

Q. Were you surprised and disappointed when Mrs. Winters refused to sign your letter? A. Yes, I was quite disappointed. I was disappointed when anybody refused to sign it, but in Aileen, I felt we were much closer together on church doctrine and on the real meaning of the gospel. * * * I was very disappointed.

Q. Did you discuss the matter with her at that time?

A. Yes, when I arrived at Mrs. Winters, Father Walsh was in her dining room. Her brother was on the couch. We didn't discuss it very long in the house, perhaps five or ten minutes. She came out with me as I left, and she stood on the steps talking for perhaps another ten or fifteen minutes.

Q. During the course of this conversation, did you raise your voice at all? A. I don't believe so.

Q. Charge No. 8 is you used violent and abusive language toward Mrs. Vinters. Did you use violent and abusive language? A. No.

Q. At the time of the expulsion proceedings before the [63] board of directors, was evidence introduced to the effect that Father Walsh had been present, and he had not heard you use violent and abusive language? A. It was.

Q. In what form? A. In the form of a letter from Father Walsh.

Q. At the time of your expulsion, in the proceedings, was evidence submitted on your behalf by persons who had declined to sign the letter that you were circulating, in which they asserted you had not used any violent or abusive language with them? A. Yes, there were three people: Captain Winfridberg, Mrs. Clayton, we call her Kitty. I am not sure of her married name, and Mr. John O'Donnell.

Q. And what did they do? A. They signed statements saying I had not used violent or abusive language when they declined to sign the statement for a special meeting.

Q. Were they read before the special meeting of the board of directors on August 14th?

MR. HARRIS: I object.

THE COURT: You are too late. He has already read it into the record. Objection overruled. Mr. Brown ought to know they are inadmissible.

MR. BROWN: It wasn't my intention to.

[64] Are these the three? Mr. Sullivan, are these copies of the three statements that were submitted on your behalf by three individuals whom you have named?

THE WITNESS: Yes, they are.

MR. BROWN: I would like this introduced into evidence as Plaintiffs' Exhibits Nos. 22, 23 and 24.

THE COURT: Admitted.

(The statements were marked Plaintiffs' Exhibits Nos. 22, 23 and 24 for identification and received in evidence.)

BY MR. BROWN:

Q. Mr. Sullivan, the Charge No. 11 or Allegation No. 11 against you is the assertion that the basis for your expul-

sion that as a basis for your expulsion, that you were responsible for the officers and directors of Little Hunting Park holding more meetings in 1965 than they would have otherwise, and they were put to additional and unnecessary transportation expense as a result. Do you know how many board of directors' meetings are required by the bylaws? A. Twelve a year.

THE COURT: Let us get the bylaws.

MR. BROWN: We will introduce them through the president of the corporation. One a month. The answers to the interrogatories that have been furnished by the defendants [65] indicate that aside from the general membership meetings held on July 29, 1965 and the expulsion hearing held on August 17, 1965, that the directors had twelve meetings during that year, the exact number required by the bylaws. The interrogatories also indicate where those meetings were held.

THE COURT: Are you just stating this for the record?

MR. BROWN: Yes, I want to question him about the answers, one of the answers. Since the allegation was made of excessive transportation costs involved in holding these board meetings in 1965, I would like you to identify some of them. You have examined those interrogatories, I believe. Can you identify, Mr. Sullivan, where the meetings were held? They were held at what locations, each of them?

THE WITNESS: In the homes of the members of the board.

* * *

MR. BROWN: Can we stipulate that in the answers to the interrogatories, that all the meetings that were held in the homes of the board members, that each of the board members' [66] homes are within a geographical distance of one mile from the Little Hunting Park, Inc. facilities or approximately a mile?

* * *

MR. HARRIS: Yes, I believe we can do that.

BY MR. BROWN:

Q. What is the average distance of these directors' meetings from Little Hunting Park, Inc.?

THE COURT: It is stipulated it is within one mile.

MR. BROWN: Within one mile, all right.

How far is Little Hunting Park's swimming pool and the other facilities, Mr. Sullivan, from your home?

THE WITNESS: Oh, I would say it is less than a quarter [67] of a mile, about a block and a half.

BY MR. BROWN:

Q. Along one street? A. Yes, along Coventry Road.

Q. Does one have to cross the street to get there? A. No.

Q. Is it within easy walking distance for you and your children? A. Yes, sir.

Q. And your wife? A. Yes, sir.

Q. Do they frequently walk there? A. The children walk there all the time, at least they used to.

Q. Can they frequently walk there and go swimming unattended, without a parent? A. The ones which were old enough, yes.

Q. Prior to your being expelled, how often did you and the various members of your family use the pool and the various other facilities of Little Hunting Park, Inc.?

MR. HARRIS: I don't see the relevancy.

THE COURT: He is showing how he is hurt by being expelled.

THE WITNESS: The children used it every day. I probably went out as frequently as twice a week, and my wife hardly at all.

BY MR. BROWN:

[68] Q. After you were expelled from Little Hunting Park, Inc. did you have to make alternative arrangements for swimming during the rest of that summer in 1965? A. For the rest of that summer, we just gave up swimming, but after that we made up elaborate plans to go swimming.

Q. What sort of places did you go to? A. Timber Lake, Lake Fairfax and Lake Barcroft. The children were invited by friends who belonged to other pools in the neighborhood to use those facilities then.

Q. Did those facilities always require automobile transportation to get to? A. Almost always.

Q. How far is Timber Lake or Lake Fairfax from your home? A. Twenty-five miles.

Q. Each of them? A. They are about the same distance.

Q. How much swimming did you do during 1966? A. Well, about every two weeks we took a trip swimming.

Q. What other additional expenses did you incur as a result of being expelled?

THE COURT: If any.

BY MR. BROWN:

[69] Q. If any. You have an itemization of the expenses that you incurred? A. Well, the filing fees for Sullivan vs. Little Hunting Park, Inc., \$25.50.

Q. Wait just a moment. Is that this proceedings or the prior proceedings? A. The prior proceedings, when we were forced to go into Court to get a fair proceeding on my expulsion, the transportation cost to Mr. Gartlan while he was on vacation, \$7.70 for trips to Fairfax, and I think with a mob like mine it was \$10.00 each trip. That came to about \$50.00. Since we had such a large group, we had to take both cars. That is \$10.00 each trip, gas and wear and tear and swimming fees and guests and our friends, \$12.00, and the loss of the assessment on the share that goes with the Quander Road house at \$37.00. The total comes to \$202.20.

Q. The total expenses? A. The total expenses I can recall, yes. There are probably others.

Q. Did you lose any annual leave as a result of this hearing? A. Yes, taking the family of seven kids to a pool thirty miles away is a day's work.

Q. In connection with the Court hearing you came to in the summer of 1965, and then in connection with the [70] expulsion hearing. A. I did take a day off to come here with Mr. Gartlan on the day of the trial. I probably took—I believe I took the whole day because by the time we got through, it was through the day.

Q. When was the expulsion hearing? A. Nine to eleven in the evening.

Q. Did stories appear in the Washington papers and the metropolitan area concerning your expulsion? A. Yes,

when we filed for an injunction, there was a story in the paper, as I saw the story myself alleging that we were being charged with harassment from the board of directors, and therefore they were considering expelling us, and there were other stories, I guess, all into September.

MR. HARRIS: Is counsel intending this testimony as damages of what is in the newspapers?

THE COURT: I don't know what his intention is.

MR. BROWN: The contention is, as a result of the notoriety that Mr. Sullivan received due to the expulsion proceedings brought out by the newspaper stories and the newspaper stories almost always note this, and as a result of the infamy that he incurred, he suffered mental and emotional damages to him and his family, and further he will show on his job it created problems.

MR. HARRIS: We will stipulate that the thing has been [71] newsworthy and appeared in the papers.

THE COURT: Go ahead.

MR. BROWN: And the newspapers have given prominence to it.

THE COURT: Let him talk. You haven't let him say a thing on any question you asked. Three hours of leading questions. Stop leading the witness and let him talk about it.

BY MR. BROWN:

Q. Did the newspaper stories state the reasons for your expulsion? A. They generally said it was because of alleged harassment of the board of directors.

Q. Can you tell the date when it first appeared? A. I would say the middle of July, July 15th.

Q. What effect did the publication of these stories have on you? What happened on your job? A. Well, at the office, the kind of occupation I am in, it is one where you have a need for anonymity, and any kind of notoriety is not beneficial. I think most of my co-workers were very understanding, and they tried to make light of the situation by jokingly referring to me as an agitator, and this happened, and the situation just created discomfort in this particular

situation where anonymity, being a cog in the wheel is an asset.

[72] Q. What kind of an agency do you work for? A. It is an intelligence agency.

Q. Did you do anything in your office? A. I felt it was necessary to discuss it with the people in personnel, and they duly took note of it, but that is all I can say about their attitude. They did not advise me to do one thing or another.

Q. Did anything happen in your neighborhood or your home as a result of these stories? A. The phone used to ring at strange hours. People would call up who apparently found our name and address in the phone book from the name and address in the paper, and some of them would talk and some of them wouldn't, and they would call at two, three, four or five in the morning, and it finally got bad enough so we got a switch put on the telephone so we could have an undisturbed night's rest.

Q. Did the newspaper stories have any effect on your children? A. I think they suffered more than all. They know the Freeman children. They don't understand why they should be excluded. They cannot understand why we would be expelled simply for an attempt to right a wrong, or in this case question the rightness or wrongness of an action.

I don't believe we were merely in a job to make a big crusade. We were simply trying to straighten out a [73] matter that had gone awry.

* * *

CROSS EXAMINATION

BY MR. HARRIS:

* * *

[75] Q. Was a special meeting held? A. A special meeting was held.

Q. At that time did the membership rule in your favor or against you? [76] A. They didn't consider the question that I wanted to have raised.

Q. What was the question that you wanted to have raised? A. The request for a meeting, specifying that the

members could meet Dr. and Mrs. Freeman; that Dr. Freeman could say a few words to the assembled members, and the members could vote on a proposition which was to the effect that this assignment having been made in due form, and the dues having been paid, et cetera, the board of directors were directed to approve this. This was never allowed to come to a vote at the meeting.

* * *

Q. They were not considered in the verbage that you used? Did the membership vote on anything? A. There was a vote.

[77] Q. What was that vote on? A. There was a vote on three items. They were twisted to the point as being put up as a proposition for votes.

* * *

[78] THE COURT: They didn't do what he asked them to do, so he felt he wasn't bound by the stipulation.

* * *

[79] BY MR. HARRIS:

Q. Will you read what you wrote in your request for a special meeting? A. To have the members of Little Hunting Park, Inc. meet Dr. and Mrs. T. R. Freeman, Jr.

Q. That is the first one. That was the first purpose.

[80] Will you read the item? A. Should the members meet Dr. and Mrs. Freeman.

Q. Read the second. A. To permit the membership to listen to brief remarks of Dr. and Mrs. Freeman.

Q. Read the next one. A. Should the membership listen to remarks by Dr. and Mrs. Freeman?

Q. Read the third question and then what the board said. A. The current assessment having been duly paid and the assignment of his share having been made in a prescribed form by Paul E. Sullivan, as landlord, to T. R. Freeman, Jr., as tenant, the board of directors is directed to approve that assignment.

Q. Will you read what the board said? A. Should the assignment to Mr. T. R. Freeman be reversed?

Q. Apparently your big objection is in that third para-

graph. My objection is in the procedure of having people vote against people whom they have not had the opportunity to meet.

* * *

[83] MR. HARRIS: The suit that is filed, asked for three things. It asked the Court to reinstate Mr. Sullivan. It asked for approval of his membership for Mr. Freeman, and asked \$15,000.00 damages.

There are three prayers in our bill of complaint. My question is directed simply to the one prayer which requests the reinstatement or the approval of the transfer of this one membership to Mr. Freeman. I think if he has agreed and has stipulated in Court, he will abide by the membership. He is not doing it. He has agreed prior to Court that he [84] will abide by it, and now he comes—

THE COURT: I will let you cross examine. Continue. Mr. Brown, although I agree with you that the stipulation should be in evidence, you can put it in evidence later, now or however you want to do it.

MR. BROWN: I take exception to the ruling that the examination is relevant or material, but I think it should be in the record now.

MR. HARRIS: You offer it.

MR. BROWN: I would like to offer the stipulation. Maybe I better show you what I am talking about, the third point, the beginning of the third paragraph.

MR. HARRIS: I have no objection to its going in.

THE COURT: Let it come in as Plaintiffs' Exhibit No. 25.

(The stipulation, marked Plaintiffs' Exhibit No. 25 for identification, was received in evidence.)

MR. BROWN: The stipulation reads, "The third point is the plaintiff agrees that he will not subsequent to the meeting of the general membership to be held pursuant to his petition calling the same, and if the decision of the membership is to ratify or confirm the decision of the board of directors, disapproving Mr. Sullivan's assignment of his membership to Mr. Freeman, to take no further action, looking

to a reversal of the board's decision in that respect as [85] far as assignment of the membership for this swimming year is concerned, it being understood and agreed, however, that nothing in the stipulation shall prevent Mr. Sullivan, the plaintiff, from taking such action as may be legal and proper for the purpose of bringing before the general membership at its annual meeting in October, 1965, such matters as may lawfully come before that meeting, which are within his rights as a member of the corporation to do."

* * *

[88] THE COURT: Suppose the Court would find he was improperly expelled from the club? Then wouldn't he be entitled to be heard on having the assignment approved?

MR. HARRIS: I agree with you, Your Honor. I think there are two different issues. One is whether the board was wrong in expelling him, or whether the board was wrong in not approving the assignment to Mr. Freeman.

Now, we have a case coming up next month with Mr. Freeman as the plaintiff. The board was asked to approve Mr. Freeman for membership. As long as this prayer is in here and it becomes an issue in this case, then I think I can pursue that course and bring evidence in, in reference to this second request we have for approval.

THE COURT: How does what you are asking for now have reference to that?

MR. HARRIS: To point out the fact that Mr. Sullivan in his suit here is requesting something very inconsistent with what he had stated before or what he has agreed to before in Court. Before in Court, he agreed he would not take any action to overturn the action of the board of directors, except as pointed out in the stipulation, the action taken at the [89] special board meeting and then reserve for himself the general meeting in October.

* * *

BY MR. HARRIS:

Q. Mr. Sullivan, are you a member of the Catholic International Council of Northern Virginia? A. Yes, sir.

Q. Are you a member of the Fairfax County Human Relations Council? A. No, I am not.

Q. What is the purpose of the Catholic International Council of Northern Virginia? A. To promote justice and harmony among men, whatever the color of their skin.

Q. Do you think it is a matter for this organization? A. Apparently.

Q. Do you think there is a great need for it? A. Within the Catholic Church, I would say, yes.

[90] Q. How about outside the Catholic Church? A. To a considerable extent, yes.

Q. Is this action, this Interracial Council concerned with the acceptability of negroes in homes in white neighborhoods? A. I don't understand your question.

Q. Is the action in your council directed toward accepting negroes in homes in white neighborhoods? Do you actually try to get negroes in white neighborhoods as part of your council? A. I don't believe so. The council has cooperated in the fair housing drive which took place in March, 1965.

Q. The fair housing drive, what is the purpose of that? A. To permit people to buy without prejudice housing which they can afford, wherever it may be, and whatever their color.

Q. You conducted a drive you say in this case? A. An inter-faith drive was held in Northern Virginia and the Catholic Interracial Council participated.

* * *

[97] Q. Getting to the meeting with Messrs. Lennon, Egger and Hanley, was there any discussion as to the economics of the refusal to approval Mr. Freeman? A. Very little, as I recall.

Q. But there was some discussion of economics? A. I believe Mr. Egger raised this point.

Q. During that time was there a question of morals raised or the moral issue raised in this case? A. Yes, I raised it.

Q. Did you say their action was shocking? A. I believe

I said I was shocked, but I am not positive what phrasing I used.

Q. You say you were shocked at their conduct? A. I was shocked at this action.

* * *

[98] Q. How about when you met with Mr. Egger, Mr. Lennon and Mr. Hanley, would you say you were emotional at that time? A. I believe not.

Q. Were you cool, calm and collected? A. I believe I was quite cold.

Q. But you did say you were ashamed of them; that their action was shocking. A. I said I was shocked at their action.

[99] Q. You testified you also talked to Mrs. Winters, and asked to have her sign a request for a special membership meeting. A. Yes.

Q. Did you get emotional on that occasion? A. I believe not. I may have possibly had a little emotional feeling when I thought I was fooled by Catholics. When Ted Freeman had to have support, he had to go over to the atheists, the Unitarians and Jews, and I believe I made in that case about the most heated statement I made to Mrs. Winters.

Q. You made that to Mrs. Winters? A. Yes.

Q. That was about the most heated discussion? A. I was standing on the steps, talking extremely low.

Q. When you spoke to Messrs. Egger, Hanley and Lennon, you found their statements hard to believe? A. That they were incredible.

* * *

Q. In your direct examination, you stated in your [100] opinion that racial discrimination is a sin. Do you believe that? A. Yes, sir. I heard this from the pulpit.

Q. One did penance? A. One of the penances.

Q. "I did not have any choice. The other evil would have had to be tremendously great to make this a lesser evil." Are those your words in your direct examination? You used the word, "Evil," and you used the word, "Sin." A. Yes.

Q. You said that the first time to me today, but these words appear in the bill of particulars. Did you use it to Mr. Lennon or Mrs. Winters, or in any of your correspondence before? A. I used it to Mr. Hanley in my conversation with him.

Q. Which did you use to Mr. Hanley? A. I believe I used the phrase, of cooperating in a moral evil with Mr. Hanley, when he suggested I should sell my share to my Quander Road house to the corporation. In the first place, I had not thought of selling it, and I couldn't sell it without the moral evil attached to it.

Q. Getting back to your letter of June 25, 1961 to Reverend Cassidy, which is Exhibit 16, you mentioned that wrote this at the request of Father Zeterberg. [101] A. Not at the request.

Q. Did you send copies of this to Father Walsh, Father Wingler and Father McMahon? What was your purpose in sending this to Father Wingler? A. The territory that Little Hunting Park, Inc. was in, lies in St. Mary's Parish and St. Louis' Parish, and one of the persons on this list was Mr. John Tracy, who is on the board. Mr. Tracy is not a director, as it turned out.

Q. Why did you send it to Father Wingler? A. He should know what was going on in his parish.

Q. He should know what was going on so far as Mr. Tracy was concerned? A. I thought he should know what was going on so far as Mr. Tracy was concerned.

Q. You sent a copy to Father Walsh. Why did you send it to Father Walsh? A. Mr. Freeman and I are two members of his parish.

Q. You also sent it to Father McMahon, who is in Richmond. A. That is right.

Q. What position would he have in Little Hunting Park? A. As I said, I did this at the advice of Father Zeterberg that Father McMahon had the same role in the diocese as Father McMahon had in the Richmond area for social [102] justice.

Q. What did you expect these priests to do for you? A.

Well, it wasn't that I expected them to do much for me. I thought they might be able to lead some of these members of the Catholic Church to consider the moral dimension of this particular action.

* * *

[119] REDIRECT EXAMINATION

BY MR. BROWN:

Q. Mr. Sullivan, you have been questioned about the fair housing pledge campaign that was conducted in the winter of 1965. I believe you said people were asked to sign pledge cards indicating the fact that they would accept persons as neighbors without regard to their race or creed. Is that correct? A. Yes, sir.

Q. Do you know about how many people signed those pledge cards in Northern Virginia? A. I believe it was upwards of 40,000.

Q. To what extent have Catholics, aside from the Catholic Interracial Council, as such, participated in that pledge campaign? Was the bishop at all involved? A. Bishop Russell, who is head of the diocese here, was one of the sponsors of the campaign, and he participated to the extent—First of all, we had pledged to the clergy in the area on the campaign in January and I think again in February. He participated in the fair housing meeting which was held in February at the George Mason High School Auditorium. I believe it was around the 28th of February, somewhere around that area, and he ordered the sermons be preached on the 28th of February classed, "Fair Housing Sunday-Sabbath," which was the coordinated effort among [120] Catholics, Protestants and Jews, for bringing this particular problem among their congregations.

Q. Were you in the congregation where Bishop Russell appeared in February? A. Yes, I was. He spoke very movingly.

Q. He spoke very movingly? What was the gist of what he said?

MR. HARRIS: Objection, Your Honor.

THE COURT: I think you are all going into this so

ing that to him. This was internal conviction on my part, moving me to discuss the matter. It wasn't a matter of communicating from me to her.

BY MR. HARRIS:

Q. Did you raise your voice to her on the telephone?

A. No.

Q. You are contending she raised her voice to you? A. Yes.

Q. You just listened to her? A. I asked her to be calm, not to be angry, and to be civil.

Q. But you think there was nothing said so far as she is concerned that would make—There was nothing said in this conversation that would irritate her in anyway? It was all on her part. She was the one that raised her voice and became angry. A. Angry, I would have to say, yes.

Q. On June 9th, you wrote a letter to Mrs. Moore. This was the same day as the conversation? A. Yes.

Q. I show you a copy of this letter dated June 9th. Is that the letter you wrote, your signature? A. Yes.

MR. BROWN: No objection.

[107] BY MR. HARRIS:

Q. Would you read that letter very briefly? A. "June 9, 1965. Mrs. Virginia Moore, President of Little Hunting Park, Inc., 807 Olmi Landrith Drive, Alexandria, Virginia.

"Dear Mrs. Moore:

"Since you, I am sure, found the conversation we had on the telephone today as unsatisfactory as I did, I request you not to call me again. Since the only relationship which exists between us is through our mutual membership in Little Hunting Park, Inc., I am sure anything you may care to say to me may be said by mail.

"Sincerely."

Q. If what you say that she was the only one who raised her voice and the only one that got excited, why do you say in this letter that she should find that telephone conversation as unsatisfactory as you did? A. I would think she would be rather upset in having lost control of herself.

THE COURT: Admitted into evidence as Defendants' Exhibit No. 1.

(The letter marked Defendants' Exhibit No. 1 for identification, was received in evidence.)

[108] **MR. HARRIS:**

Q. Now, as a result of your being informed that the transfer to Mr. Freeman was denied, did you consult with some of your friends over this problem? A. Yes.

Q. Did you consult with one, Mr. Wells? A. John Wells, the minister of the Unitarian Church. I did after some time, not immediately.

Q. You testified earlier you did not consult with him.

MR. BROWN: Objection. That is not the testimony.

THE COURT: I think he talked to him.

THE WITNESS: No, no.

MR. HARRIS: I know we put Father Walsh and Mr. Wells in the bill of particulars. The testimony was that he had not talked to Mr. Wells.

MR. BROWN: May I explain that?

THE COURT: Yes.

MR. BROWN: The testimony relating to the June 25th letter and the allegation was that, as explained in Mr. Harris' letter of August 9, 1965, the allegation against Mr. Sullivan was that certain statements were made in a letter to Mr. John Wells. The testimony this morning was that Mr. John Wells received no such letter at any time. We have Mr. Wells here and he will so testify. That is the allegation. If you say that is an error, we will agree to drop it.

[109] **BY MR. HARRIS:**

Q. I asked whether he consulted with Mr. Wells in reference to what you thought was the problem in this particular community. A. I answered that.

Q. And you also talked to a Father Davis. A. I did.

Q. Father Walsh? A. Yes.

Q. Did you talk to other people? A. Some, yes.

Q. Did you talk to anyone from the Fairfax County Human Relations Counsel? A. Yes.

Q. Did you talk to the Catholic Interracial Council? A. What do you mean? I talked to Private Holly.

Q. Did you talk to some other people? A. I talked to some other people.

Q. What was your purpose in talking to these other people? A. To find out what could be done to resolve this problem.

Q. Were there any suggestions that came out of this meeting to find out what could be done? A. What meeting?

[110] Q. These people you talked to. A. I wasn't talking about a meeting.

Q. You did not meet with these people? A. I met with some people on one occasion.

Q. What occasion was that? A. We met at the Unitarian Church one Sunday evening, and we talked for probably an hour and a half.

Q. Did you reach any conclusion at that meeting as to what action you should take? A. Conclusion as to what action, no. Conclusion we should try to resolve it in a just and fair manner, yes, sir.

Q. You want to resolve it in a just and fair manner? A. Fair.

Q. Was there any conversation with anybody about this meeting that you had? A. There might have been, but I don't recall.

Q. Did you suggest that they write letters? A. No, not to these people. Many weren't members.

Q. Did you suggest to members that they write letters? A. To a lot of members, yes.

Q. Did you discuss that they telephone? A. I never suggested that anyone telephone.

Q. Did you suggest that they harass these board members with letters? A. Harass, it doesn't sound right.

[111] Q. You stated that you came to no conclusion at this meeting you had at the Unitarian Church. A. No, I didn't say we came to a conclusion. I said I don't recall whether we did or not, but there was no action.

Q. There was no action with respect to their pursuing it? A. Not that I recall.

Q. Let us go back to the letter of June 25th to Father

Cassidy. Take the second half of the second paragraph on Page 2, beginning with later that evening. Will you read that? A. Later that same evening, we met, talking about what time? It doesn't say what time. Later that same evening we met with the Freemans, some other interested persons, Father Davis and a negro pastor in Alexandria, and Mr. John Wells, Pastor of the Unitarian Church. We invited Father Walsh to attend, but at the action of the bishop, he declined, and he said that there were many avenues to pursue in this matter.

Q. "In our discussion, we came to the conclusion there were many avenues we should pursue in this matter, but until they were resolved, we should pursue them." There was no conclusion? A. That we were to pursue it.

[112] Q. How would you pursue it? A. By means that were available to us.

Q. What means were available to you? A. I really don't know what the windup of that meeting was.

Q. Telephoning the board of directors? A. That wasn't included.

Q. At the expulsion meeting, didn't you ask these people to write letters, but they telephoned instead? A. I asked people to write letters because I didn't feel the telephone calls had much value.

Q. Didn't you at that time say some people had called? A. I did not know.

Q. Your Exhibit No. 18 is a letter from you to Father Cassidy in which you are enclosing all your correspondence. Now, in the first sentence, in the second paragraph, will you read that to me? A. I am sorry that I misinterpreted Father Walsh's attitude.

Q. Yes, go to the next sentence. A. I had no way of knowing he had taken action of any kind and I assumed there was no action being taken of any kind.

Q. What action did he take? A. I believe Father Cassidy said in his letter, "To [113] my personal knowledge, he took no action, but Father Cassidy had said in his letter that Father Walsh had gotten in touch with Father Wing-

much, let him go as far as he wants. Objection overruled.

THE WITNESS: He characterized the problem as being, the Bishop stated and reiterated, primarily a moral and religious problem, the problem of racial discrimination, and that an effort such as we were being involved in at that point, a solution of which would give prompter support than if he worked in a smaller group.

BY MR. BROWN:

Q. Were Bishop Russell's remarks publicized in the press in this area? A. Yes, they were. Major papers carried the stories.

Q. Was his story carried in the papers in Northern Virginia? A. The Catholic Gazette carried an extensive article on it.

Q. Bishop Russell is from where? [121] A. Richmond.

* * *

[122]

JOSEPH WINGLER

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

[122]

DIRECT EXAMINATION

BY MR. BROWN:

Q. State your name and address. A. Reverend Joseph Wingler, 310 Duke Street, Alexandria, Virginia.

Q. And you are the pastor of what church? A. St. Marys.

Q. One of the allegations against Paul E. Sullivan, an act for his expulsion from Little Hunting Park, is to the effect he had somehow done something improper by mailing to you a copy of a letter that he had sent under date of June 25, 1965 to Reverend Cassidy, the Director of Catholic Charities of Northern Virginia. Were you approached by an attorney representing Mr. Sullivan concerning that matter in the summer of 1965? A. Yes.

Q. Do you know the attorney's name? A. No, I don't recall.

Q. Did you give the attorney a statement relating to the allegation made against Mr. Sullivan? A. Yes.

THE COURT: Any objection to this, Mr. Harris?

MR. HARRIS: No, Your Honor.

THE COURT: Admitted.

(The statement, marked Plaintiffs' Exhibit No. 26 for identification, was received in evidence.)

[124] **BY MR. BROWN:**

Q. Do you recognize that statement? **A.** "This is to certify that Mr. Sullivan's letter of June 25, 1965 to Father Cassidy, of which I received a copy, was in no way detrimental to the employment status of Mrs. Virginia Moore, who works for me."

MR. BROWN: That is all I have.

THE COURT: Do any of the people of Little Hunting Park belong to your church?

THE WITNESS: I think so. I don't know any specific ones.

THE COURT: Did you talk to them, talk to your parishioners about this?

THE WITNESS: No.

THE COURT: Do you have any questions?

MR. HARRIS: Yes, Your Honor.

CROSS EXAMINATION

BY MR. HARRIS:

Q. There was a list attached to this letter of June 25th. Was there not, Father? **A.** I don't recall. It was two years ago. I only read the letter once. I think there was.

THE COURT: You say you read it once and threw it away?

THE WITNESS: Yes.

* * *

[126]

JOSEPH GARTLAN

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will you state your name and address, please? **A.** Joseph V. Gartlan, Jr., 3507 Woodside Drive, Alexandria,

Virginia, Post Office, Fairfax County.

Q. What is your occupation? A. I am an attorney.

Q. In the summer, have you previously represented Mr. Sullivan in this matter that is before the Court today? A. Yes, sir.

Q. Were you representing him in the summer of 1965, at the time the proceedings were pending against him concerning his expulsion? A. Yes.

Q. In the course of preparing a petition for him for purposes of appearance before the board of directors, did you obtain statements from various persons who were in some way [127] involved in the controversy? A. Yes.

Q. Did you attempt to obtain information by way of rebuttal for the various charges made against Mr. Sullivan? A. Yes.

Q. In the course of collecting that information and data, did you visit Father Eugene Walsh? A. Yes, I did.

Q. Are you a member of his church? A. Yes.

Q. Did Father Walsh give you a statement concerning the allegations or the charges against Mr. Sullivan? A. Yes, he did.

Q. Plaintiffs' Exhibit 27, I want to show you a statement dated August 16, 1965. Will you identify that, please, and state whether that is the statement you obtained from Father Walsh or a copy of it. A. Yes, this is a statement which was prepared by me after a discussion with Father Walsh of the subject matter contained in the statement, and taken back to him and read by him and signed in my presence.

Q. Would you read the statement, please? A. Dated August 16, 1965.

"To whom it may concern:

"I have received and read a copy of a letter [128] written by Mr. Paul E. Sullivan, dated June 25, 1965, and addressed to Reverend Thomas J. Cassidy, Director, Catholic Charities of Northern Virginia. Mr. Sullivan is a member of St. Louis' parish, Groveton, Virginia. I am his pastor, and a reference is made to me in the last paragraph on the second page of that letter.

"I was present in the home of another parishioner, Mrs. Alleen Winters at the time of Mr. Sullivan's visit, as described in that paragraph. I have no relationship, legal or personal with Little Hunting Park, Inc., its directors or members, other than the fact that some of these individuals are members of my parish.

"Mr. Sullivan's letter, therefore, did not create a strained relationship between the corporation and me, and it would not have had such effect, at least so far as I am concerned, had any such relationship existed. The letter did not in anyway affect the relationship between me and the corporation's members who belong to St. Louis' parish.

"Mr. Sullivan did not, in my judgment, use violent and abusive language when Mrs. Winters declined to sign his petition for a meeting of [129] the members of the corporation.

"Very truly yours, Eugene P. Walsh, Reverend Eugene P. Walsh, VF Pastor, St. Louis Parish, Groveton, Virginia."

MR. BROWN: May this letter be admitted into evidence, please?

THE COURT: No objection?

MR. HARRIS: No objection.

THE COURT: It will be admitted.

(The letter, marked Plaintiffs' Exhibit No. 27 for identification, was received in evidence.)

BY MR. BROWN:

Q. Was that letter submitted to the Board of Directors at the time of the August 27 hearing concerning Mr. Sullivan's expulsion? A. Yes, it was.

Q. Did you submit it to the board for their consideration in connection with the charges against him? Is that correct? A. In connection with the specific charge, as I recall, that the letter referred to in that exhibit had affected the relationship between Father Walsh and Little Hunting Park, Inc. and in connection with the charge that Mr. Sullivan [130] had used violent and abusive language. We offered that particular letter in rebuttal.

Q. You say it was obtained after thorough discussion

with Father Walsh. Was he at all reluctant to give it? A. No, sir.

Q. Was he fully apprised of what the issues were in the case, fully informed and aware of what he was signing? A. Yes, as I said the letter was typed by me, but after a discussion with Father Walsh about the background of the situation, some of which he was already familiar, the letter as typed by me, represented what I fairly understood to be his version of the facts related in that letter, and as I said, I brought the letter back to him. He read it carefully, so far as I could judge, and then signed it, with no reluctance, no hesitation and no reservation.

Q. Did you obtain another letter from Reverend Joseph Wingler, also pertaining to one of the charges made against Mr. Sullivan? A. Yes.

Q. Was that statement, that letter which has been introduced into evidence, obtained from Reverend Wingler as a result of Reverend Wingler's voluntary act? Did you explain to him what it was all about? A. I called him the same day, maybe the same day. I don't recall, telling him I represented Mr. Sullivan; that [131] I asked to come and see him about the matter in which Mr. Sullivan was involved with Little Hunting Park. Insofar as it related to Father Wingler, we made an appointment, and I visited him at the rectory at St. Mary's, Alexandria, Virginia.

I told him the purpose of my visit and told him in submitting correspondence which had been initiated with respect to Mr. Freeman; that some of that correspondence had the effect of adversely affecting the relationship of a member of the board of directors of the pool, which was amended by Father Winger. He knew the employee, and was asked if it had the effect alleged by the corporation, and he said it had not, and I asked him to put that statement in writing, and he wrote out in his own hand.

Q. Was that at the time of the expulsion of Mr. Sullivan by the action of the board of directors? A. It was.

* * *

[133]

ROBERT A. MARSHALL

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION**BY MR. EVELETH:**

Q. Please state your name and address. A. My name is Robert A. Marshall, 2003 Paul Spring Road, Alexandria, Virginia.

Q. Is that in Fairfax County? A. It is.

Q. How long have you resided in Fairfax County? A. Seventeen years.

Q. Prior to that time, did you reside in the Washington metropolitan area? A. I did in Prince Georges County.

Q. So you have been in the Washington metropolitan area. By whom are you employed? A. Kiplinger Letters, Washington Editors in the District [134] of Columbia.

Q. What is your position with that organization? A. I am one of three senior editors of Changing Times Magazine.

Q. Will you please explain the nature of that magazine? A. Changing Times is a nationally circulated monthly magazine that deals mainly with matters relating to personal finances and money management.

Q. What else does it have to do with? A. It has to do entirely with the problems that bear on the management of family money, such as buying a home, buying an automobile, insurance, personal investment, and such problems.

Q. Would you please explain, if you know, what the approximate circulation and readership of this magazine is?

A. We have one and a quarter million subscribers.

Q. And this is through the country? A. Yes.

Q. Is this magazine directed by an editor, who is your chief? A. Yes.

Q. Now, if the editor were to publish an article, he wanted to publish an article on home buying or something

of this nature; to which of the three senior editors would he assign this topic of writing? [135] A. To me.

Q. Are you the magazine specialist in the matter concerning the rental and purchase of homes and apartments?

A. I am.

Q. How many articles would you say are published in a year's period on this problem of apartment renting and house buying, et cetera? A. Home buying is a stable ingredient in our magazine and there is usually something concerning this topic in every edition, every month.

Q. How many issues in a year? A. Twelve.

Q. And you supervise and write these articles? A. Yes, sir.

Q. In addition to writing and supervising these articles, have you had any other publications? A. I had a book published in 1964. "Before You Buy A House." It was published in paper back and hard cover editions.

Q. How many sold? A. To the best of my knowledge, about 20,000.

Q. Can you tell me what other experience you have had in this area of housing, what other positions you have held, aside from Kiplinger? A. Before joining the Kiplinger organization, I was [136] employed by the Federal Housing Administration, a federal agency. I was Executive Secretary to the administrator, and secretary of the architectural advisory committee, which was a committee of well known architects throughout the country, advised the agency on design in public housing projects.

Q. Did you have anything to do with the planning of it? A. Before I became Executive Secretary of the Commissioner, I was Acting Publicity Director for two years.

Q. Do you belong to any professional committees? A. I formerly belonged to the National Association of Housing and Redevelopment Officials and the American Institute of Architects.

Q. Have you done any teaching in this home development? A. For two years, George Washington University, joined with the Potomac Chapter of the American Institute

of Architects, presented a course designed for people interested in building homes or buying homes and I was a lecturer in this course and they used my book as a text in the course.

Q. In order to keep abreast in this field of home buying, did you have to consult articles through your magazine, through your lectures, in other words, magazines in the nature of home building, what people are buying and what people are selling, in order to keep abreast? [137]

A. Yes, I do that as a matter of keeping informed and abreast of the conditions in this area.

Q. Would you consider yourself knowledgeable of what a potential buyer or renter of a home is looking for when they go out to rent or buy a house? A. Yes, sir, I am.

Q. In preparation of your article, did you consult builders in this Washington metropolitan area? A. Yes, sir, I do.

Q. Do you think you know generally what they look for in homes in this area, that is to say the northern Virginia area, what they want in a house? A. Yes.

Q. What importance would potential buyers or renters of houses attach to the availability of nearby recreational facilities?

MR. HARRIS: I don't think this man has been qualified. He is a newspaper editor of a home magazine. He had no special education along these lines, other than writing an article for the magazine or a book.

MR. EVELETH: He has worked in this field for a number of years.

THE COURT: Let him testify for what it is worth.

BY MR. EVELETH:

Q. Would you answer that? What importance would you [138] say potential buyers and renters of homes attach to the availability of nearby recreational facilities? What importance is it? A. I think the availability of recreational facilities is one of the essential considerations that a person takes into consideration when he selects a place to live, a house to rent or buy. I think this is of particular concern with families with children.

* * *

BY MR. EVELETH:

Q. In this area of this Northern Virginia area, are recreational facilities, such as swimming pools, normally owned and operated by municipal authorities or by community organizations such as Little Hunting Park? A. The general pattern is to be operated by community associations. Sometimes they are provided by the developers and sometimes they are created by the home owners, themselves.

Q. Rather than municipally owned and operated? A. That is right.

Q. How many municipally owned swimming pools are there in the Northern Virginia metropolitan area? [139] A. There are only two of that type. Alexandria has two and Fairfax County acquired one the last year in Lake Fairfax.

Q. I am speaking of an area consisting of Arlington County, Fairfax County, the City of Alexandria, and the City of Falls Church. Would you answer the same when I divide it that way? A. Yes.

Q. Do you know what the population of this area is? A. Under 700,000, 690,000 is it.

Q. So there are two pools for 690,000 people? A. Publicly owned and operated, a municipal type, yes.

Q. You say the pools in this area are normally owned and operated by such organizations as Little Hunting Park are prevalent in this area? A. Yes, they are. There are nearly fifty of them.

* * *

[140] Q. How many are there? A. The Northern Virginia Swimming League, and they conduct competitive meets and there are 48 or 50 members in this league.

Q. If the head of a family in a suburban subdivision in this area, wanted his family to participate in swimming in a readily accessible area, would he generally have to belong to an organization such as a home owners association? A. I think he would.

Q. So then how important would you say the importance of neighborhood swimming facilities would be to the poten-

tial renter of housing in this area? A. I think it is an essential consideration for the welfare of his family.

Q. Is this less true today than ten years ago, or more true? How important are these things today? Has it become more important or less important? A. It becomes more important. The trend is increased planning in suburban developments to include places and facilities for recreation.

Q. You have been giving a lot of conclusions. I am sure the Court would like to know on what you draw your conclusions. How do you find this conclusion? How do you know this is the trend? [141] A. Because I read the professional and trade literature as consistently as I have for fifteen years. I go to builders' meetings and conventions, and I frequently talk to them, interview them.

Q. I see. Do you have a particular knowledge of a particular subdivision, or do you have a general knowledge of general parts of the country? A. I try to keep informed of national trends. I write for a national magazine. I am familiar with local conditions, because I live here and in the course of my work, I have occasion to talk to local practitioners in planning and building.

Q. You mentioned some sort of professional studies and might base your knowledge on. What sort of professional studies, would you give the Court an example of these studies? A. Yes, there is a study of an organization of the Urban Land Institute in Washington. It is a national organization.

THE COURT: Does it deal with Fairfax County?

THE WITNESS: On occasion, it did.

THE COURT: Did it deal with it on this subject?

THE WITNESS: Yes, they recently published a technical study having to do with open spaces, marketing acceptance of open spaces and marketing conditions of subdivisions. This [142] was a national study, a particular study of 28 communities across the country, but three of them happened to be in Fairfax County. No, I am sorry. Two of them did, but one was in Washington.

THE COURT: How many in Fairfax County?

THE WITNESS: Georgetown South and Manassas and Reston. The third one in the Washington area is Crofton, which is in Maryland.

BY MR. EVELETH:

Q. Who belongs to this Urban Land Institute, what kind of membership? A. There is a membership, of course, which makes its studies available generally to anyone who would be interested in it. It is possible for a member of the public to buy its publications, but they are generally sold to people in the real estate business.

Q. You spoke about a particular study, and you told us about how it was conducted. Is this the study? A. It is, yes.

* * *

[143] Q. Chapter 7 on recreation, the study is based on some conclusions from interviews with developers and from purchasers, and this quotation appears in here, and I want you [144] to tell us whether or not it agrees with your point of view. "Almost no developer who has installed recreation facilities in a subdivision regrets it. The best way to sell families with children is to let the kids see your recreation area. And there are several others."

THE COURT: Do you agree with that or disagree with that?

THE WITNESS: Yes, sir, I agree with that.

THE COURT: What is your agreement based on? How many developers have you talked to?

THE WITNESS: I have talked to a great many.

THE COURT: How many?

THE WITNESS: Fifty to one hundred.

THE COURT: Name one.

THE WITNESS: I have talked to?

THE COURT: Any in Fairfax County?

THE WITNESS: Yes, sir.

THE COURT: Anyone?

THE WITNESS: I talked to one ten minutes ago. His name is Hiber, and one in the hall.

THE COURT: What did he have to say?

THE WITNESS: He said he was interested in obtaining a swimming pool for his development that he was planning.

THE COURT: Did he say why?

THE WITNESS: I didn't ask him why.

THE COURT: Have you talked to any other builders in this [145] area whose area, who related their experiences? Tell us what were their experiences.

THE WITNESS: I have talked in the past to Carl Freeman, a builder in this area.

BY MR. EVELETH:

Q. What did he say? A. He is a strong proponent of recreational facilities and used them extensively in his apartment facilities.

Q. Why does he use them? A. There is a great demand for them.

[146]

* * *

Q. There is some general statements of the importance of swimming pools with buyers. It says, "Pools are most popular. Swimming pools are at the top of the list, even though used only three months a year in most areas. A pool gets more use in that period than most facilities used the year around. The value of a pool to families and the developer depends directly on activities planned with the pool as a center of the program. A pool with no special program, is a real asset. But a pool that has a strong program director and a program all day long for six or seven days a week for young and old can become the talk of the community and its greatest selling feature." Do you agree from your experience or disagree? A. I agree.

Q. I refer to a survey they took, appearing on Page 47, as reported by 721 families. "When all communities are taken together, some 48 percent of the families use the swimming pool and other water activities. This is more than double the popularity of the next category of parks and playgrounds and shows that pools and water are in a class by themselves."

Does this conform with your opinion or not? A. Yes, it does.

Q. Under the section, adult use of recreational facilities, "Pool or other water facilities are more than twice [147] as popular than anything else." Do you agree or disagree?

A. I agree.

MR. EVELETH: I offer Technical Bulletin No. 57, which is marked as Plaintiffs' Exhibit No. 28 into evidence.

THE COURT: Admitted. You note an objection?

MR. HARRIS: I so note.

(The bulletin, marked Plaintiffs' Exhibit No. 28 for identification, was received in evidence.)

BY MR. EVELETH:

Q. Previously, you testified to consulting trade journals in your work, and they aided you in forming your opinion concerning the importance of swimming pools. Is that correct? A. Yes, sir.

Q. Can you give us an example of such trade journals?

A. Among them is House and Home, the Journal of Home Building, published by the National Association of Home Builders, and a journal such as the American Builder and Practical Builder.

Q. You mentioned Practical Builder.

THE COURT: Any objection to this?

MR. HARRIS: I object to it.

THE COURT: State your objection.

MR. HARRIS: It is a periodical. What it contains is [148] hearsay.

THE COURT: Objection overruled.

MR. EVELETH: I hand you—

THE COURT: Have you marked the pages in there too?

MR. EVELETH: Yes, sir.

I hand you Practical Builder, dated February 1, 1964. Are you familiar with this particular issue or excerpt from that issue?

THE WITNESS: Yes.

BY MR. EVELETH:

Q. I will read the following statement to you. There are many I won't read. "Recreational facilities take many forms, but the community swimming pool is considered by

most builders as one of their most popular sales appeals to people of all ages and income." Do you agree or disagree from your experience with the truth of that statement? A. I agree.

THE COURT: It has already been admitted.

MR. EVELETH: Thank you.

How else do you know that swimming pools are important to people? How do you know that builders think they are important? Do they inform the people of this in any way?

THE WITNESS: Yes, indeed, they do. They usually make a strong point of the existence of such ~~advertisements~~ in their sales literature and advertisement and promotional campaigns.

[149] BY MR. EVELETH:

Q. Where would such advertisements appear? A. Any weekend in the Washington newspapers would be a source.

MR. EVELETH: I offer this particularly because it concerns this area, and as the Court has expressed an interest in it, as Plaintiffs' Exhibit No. 29.

Are you familiar with this compilation of newspaper advertisements?

THE WITNESS: I am.

MR. HARRIS: Objection, Your Honor. The newspaper is hearsay. Bring the editor in.

THE COURT: What is the number of it? Thirty?

BY MR. EVELETH:

Q. This is a compilation of advertisements appearing in the Washington Post, Evening Star Newspapers. Is that correct? A. That is right.

Q. And these appeared over a period from June, 1966 to January 28, 1967. Is that correct? A. I believe the dates are right, yes.

Q. These are not all the advertisements that have appeared? A. No.

Q. This is a compilation? [150] A. Just a selection.

Q. Would you say these generally represent the types of advertisements that appear? A. It is representative.

Q. Would you say the advertisements that mention swim-

ming pools at all representative of them? Have we picked only the ones that really push swimming pools? A. No, I think you could get a similar compilation from the next weekend.

MR. EVELETH: I offer the same. First of all, I would like the Judge to take judicial notice of the fact that these advertisements do appear.

THE COURT: Received in evidence as Plaintiffs' Exhibit No. 30.

(The newspaper articles were marked Plaintiffs' Exhibit Nos. 29 and 30 for identification, and received in evidence.)

MR. EVELETH: If Your Honor desires to examine this, I pointed out one section that appeared in the newspaper advertisement of the Evening Star.

THE COURT: I won't have time to read it now. You go ahead and make a note of it.

MR. EVELETH: In the Star of January 20, 1967, a twelve-page supplement, entitled, "Winter Apartments, 1967," and [151] appearing in there are over fifty advertisements of apartments in which the prominent mention is made of swimming pools. Thank you, Mr. Marshall.

* * *

[155] JAMES F. SUTHERLAND

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Would you state your name and address? A. James F. Sutherland, 6401 Cavalier Drive, Alexandria, Virginia.

Q. What subdivision is that in? A. Bucknell Manor.

Q. Are you a member of Little Hunting Park? A. Yes.

Q. Did you hold a membership in 1965? A. Yes.

[156] Q. Are you married and have children? A. Yes.

Q. How many children? A. Two children.

Q. What is your occupation? A. I am Administrative Assistant to Congressman Claude Pepper of the 11th District of Florida.

Q. When did you first hear of the controversy involving the board of directors' rejecting the assignment of membership to Dr. Freeman? A. Mr. Sullivan called me and asked if he could come over and discuss the matter with me. I don't know the exact date.

Q. Can you tell us approximately the time that was? A. It would have been in April, the early part, the middle of April. I am not sure of the exact time. The only way I know to place the time is in connection with the meetings of the board, and my conversation with Mrs. Moore.

Q. In what month was that? A. I believe it was in April. It was in the spring.

THE COURT: It is immaterial. Were you a member of the board of directors?

THE WITNESS: No.

BY MR. BROWN:

Q. When did you learn, or how did you learn about this [157] whole matter?

THE COURT: Mr. Sullivan called him.

BY MR. BROWN:

Q. Mr. Sullivan called you, and what did he say? A. He mentioned that he had rented a house to Dr. Freeman, and that he had received, I believe he had received a letter saying that Dr. Freeman had received a letter turning down his membership, and asked that he come over and discuss the matter with me, and he did come over and we did discuss the matter. This has been a matter of which I have been interested, because I have a friend who is a member of the board of directors of another pool, and a member of our church, and we discussed this problem generally in connection with the swimming pools in our area, so I was very glad to talk to him about it.

Q. What was the conclusion of your meeting with Mr. Sullivan? A. And of course I indicated to him my support for his desire to obtain membership for Dr. Freeman and suggested that I indicate my interest by calling the chairman of the board to ask if he could attend the board of directors meeting, which I understood was in the next day

or two, so I called and asked for the time and place of the meeting, and indicated I would like to attend. That is the only way I can place the time. I know it was in the next day or two that there was to [158] be a meeting. Mr. Sullivan said that he thought there was a meeting. Mrs. Moore said the meeting was already held, and she was going on a vacation. It was in that period that I talked with her.

Q. Had you attended a meeting at the church the Unitarian Church with Reverend Wells, in which there had been a discussion of the matter? A. I attended that meeting.

Q. Do you remember the date of that meeting? A. No, I don't.

Q. Was it before you called Mrs. Moore? A. I am not absolutely sure.

Q. When had you been led to believe that there was a meeting of the board of directors? A. After I talked with Paul Sullivan, individually.

Q. What date would that have been? A. Somewhere around the middle of April.

Q. What more did Mrs. Moore say to you? A. She said that the board had acted in accordance with its authority under the bylaws, and that the matter was closed. I am not sure of the direct back and forth response after this period of time, but I asked that there was some reference that the board was acting in accordance with the best interests of the corporation. Whether I asked her a question that elicited this response, and then I asked if she [159] really thought it was acting in the best interests of the corporation, and she said it was, and I terminated the conversation, but that she thought it was, and I terminated the conversation, and enjoy your vacation, which she told me she was going on a vacation and wasn't going to be working.

Q. Mr. Sutherland, are you certain it was in April? You have told us it was in April. A. It was later. It was in May. It was before the opening of the pool. I am not very good at dates.

Q. One of charges against Mr. Sullivan acting for his expulsion allegedly was that he was responsible for making an

unfriendly phone call to Mrs. Moore. Were you unfriendly?

A. No.

Q. Did you accuse Mrs. Moore or the members of the board of directors of being "guilty of hatred and bigotry"?

A. No, I certainly did not.

Q. Did you use the words, "Hatred and bigotry," with her? A. No, I wouldn't have in a conversation over the phone. My purpose was not to do anything more than to indicate my support for this. By seeking to attend the meeting, I certainly had no desire to antagonize the members of the board.

Q. You identified yourself when you called. Did you?

A. Oh, yes.

Q. Did you at any other time during the period of May [160] through August, 1965 make any other calls to board members? A. No.

Q. You observed Mr. Sullivan on several occasions during this period, I believe. A. Yes.

Q. Would you describe his manner, please, and how he acted? Was he emotional about this whole thing? A. No, quite to the contrary.

Q. Was he calm? A. He was calm. He was logical about it. He struck me he was a man who did what his conscience dictated. If anything, I thought he might be a little naive in perhaps having a higher opinion of how the membership of the pool would react to this question than I did. He wasn't emotional, and I think he under estimated the emotional feeling that this would arouse.

Q. You have stated this phone call conversation you had with Mrs. Moore occurred in April. Could it have been June, the middle of June? A. It could have been June, yes. I did not go to the pool much. I took a new job in April, so this undoubtedly followed sometime after that.

Q. The board did not act to reject the assignment to Dr. Freeman until late May. This had to be subsequent thereto. Is that right? [161] A. That is right. I don't normally peg things to certain dates. I gauge things from events. It was well after I took a job on the 9th of April.

* * *

[163]

FLORA SULLIVAN

plaintiff, was called as a witness in her own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. State your name and address, please. A. Flora Sullivan, 7113 Coventry Road, Alexandria, Fairfax County, Virginia.

Q. Are you the wife of Paul E. Sullivan, and also a plaintiff in this case? A. I am.

Q. Do you recall the occasion on May 28, 1965, when three gentlemen visited your home to discuss the matter of your husband's assignment of his share to Dr. Freeman?

A. Yes, I do.

Q. Who were the gentlemen? [164] A. One was Mr. Egger, whom I knew for a long time, and the other two gentlemen were introduced as Mr. Hanley and Mr. Lennon, whom I had not known long before.

Q. Did the gentlemen explain why the assignment to Dr. Freeman had been disapproved? A. Not really. I heard Mr. Hanley say that the assignment had been disapproved because it had been disapproved, and my husband questioned that, "Is that the reason, or did I hear you correctly," and he nodded, after awhile Mr. Hanley said, "We are aware that Dr. Freeman is a negro," so my husband asked, "Is that the reason," and Mr. Hanley nodded, and my husband asked if he had considered anything else about Dr. Freeman than his race, and they said, "No." Mr. Hanley said, "No," so my husband said, "I would call that bald faced prejudice," and I believe he said, "You may call it what you may," something to that effect.

Q. Was that all that was said? Excuse me. A. No, I believe Mr. Hanley stated that this was the unanimous feeling of the board, and my husband said he couldn't believe it. It was incredible, and he asked if he would bring a colored guest to the pool, would he be allowed in and they

said, "He might or he might not." I don't remember exactly. Would this apply to Mexicans, Porto Ricans, Chinese or other nationalities? He didn't give much of an answer to that.

[165] Q. Did your husband accuse the board of directors of practicing bigotry and hatred, to use the words in the allegation? A. No, he did not.

Q. Did he call the three gentlemen liars? A. No.

Q. Did he say they were, "Untruthful"? A. No.

Q. Were you present in the room when your husband called Mrs. Moore on June 9, 1965? A. Yes, I was.

Q. How did he happen to call her? A. Mrs. Moore had called the evening before, and my husband wasn't there, and I asked if she wanted to be called back. She said, "Yes," so when my husband got back, it was about eleven o'clock. It was too late to call her back then, so he called her back the next day as soon as he got back from work.

Q. What did you hear him say during the conversation? A. I only heard him say he was returning her call and whatever Mrs. Moore said, he said, "I believe Father Walsh would be disappointed. Please, Mrs. Moore, don't be upset. Please, Mrs. Moore, don't be angry. Please, you are being impolite," and a few minutes later, I guess she had hung up on him.

[166] Q. How do you know that? A. Because I asked did you hang up, and he said, "No, she did."

Q. Did you hear everything he said during that conversation? A. Yes.

Q. Did you hear him say anything else? A. No.

Q. Did he use abusive language in your judgment? A. No, sir.

Q. Did he accuse Mrs. Moore of being emotional? A. No.

Q. Subsequent to the expulsion proceedings that were initiated against you in Mid-July or the early part of July, or after you have received word of the expulsion proceed-

ings and the communication appeared in the newspaper concerning that. Is that correct? A. Yes.

Q. Did you collect the newspaper clippings on the subject that appeared? A. I did. If anybody gave me an extra paper, I cut them out.

Q. Did you give me a collection of newspaper clippings you had collected on this subject, which gave prominent notice to the fact that there were expulsion proceedings [167] pending against your husband? A. Yes.

Q. And what did they accuse you of?

THE COURT: You are going to introduce them into evidence?

MR. BROWN: Yes.

THE COURT: Any objection?

MR. HARRIS: I think we have the newspaper, of the Washington Star into the record already, so I have no objection.

THE COURT: Just tell her what number to put on it.

MR. BROWN: 31.

THE COURT: Let them be admitted from 31 on up.

(The newspaper clippings, marked Plaintiffs' Exhibits Nos. 31 through 38 for identification, were received in evidence.)

BY MR. BROWN:

Q. Was prominent mention given to the effect that expulsion proceedings against your husband were pending because of his harassment before the board of directors? A. Yes, sir, it seems that every time I read anything about it was due to the alleged harassment of my husband.

Q. Was there any mention made in the articles about the place of business of your husband? [168] A. Yes, there was one time it gave the wrong address of the national agency. He does not work there any longer.

Q. Following the publication of these articles, did your family experience any affect? A. Yes, we did. We started getting a lot of anonymous calls. They would call any time during the day and say nothing. They would call one particular evening. We were getting called at one, two, three

and four o'clock in the morning. I could hear machines in the background, but no one would say a word. I would answer the telephone and say, "Hello." There was nobody there. We were getting called so frequently that I called the the telephone company and disconnected the bell so I wouldn't hear it at night.

Q. When was this? A. July 26th that they disconnected it.

Q. Would you describe generally the effect that this expulsion from the pool has had on you and the members of your family? A. Well, I think that there are many, really. For one thing, I don't feel comfortable in going to my own church because there were a lot of dirty looks and people making remarks against my children and myself, so I found it very trying. Constantly, it seems to me I have been stigmatized permanently, because when someone gets expelled from a corporation, I am sure people say, "They must have done [169] something to be expelled." They don't feel it was just expulsion. It is very hard to explain to children why they cannot go to the same pool they have been used to for many years. Many evenings I have watched my children. The other children go by to their swimming pool. We are so close to it. I think it is a very trying situation.

I think I have had a loss of quite a few friends, and I have been kept out of going to even a PTA Meeting. I have to think twice before I can make up my mind I am going to be comfortable in those situations, and I think I have been kept out of invitations if they knew other people might be present that might have a different view than we did, and a couple of times our mail box was pulled up by the roots from the front of the yard, and I made a complaint to the post master about that. This type of things seems to be in the air constantly.

Q. You were in the Courtroom this morning when your husband testified concerning expenses, inconveniences and general observations you experienced in going swimming the last year or more. Is there anything you would like to add?

A. It is inconvenient to go that far to take children to swim.

[173] THE COURT: It isn't clear today whether both memberships were cancelled, withdrawn or rescinded.

* * *

[174] MR. HARRIS: When Mr. Sullivan was expelled, he was tendered a check for both memberships.

THE COURT: All right.

REDIRECT EXAMINATION

BY MR. BROWN:

Q. Mrs. Sullivan, when was this membership meeting held? A. I believe it was July 29th.

Q. The expulsion proceedings before the board of directors was what date? A. August 17th.

Q. What happened when people who supported your husband's position tried to speak at the membership meeting? A. They were yelled out and called all kinds of vituperations.

[175] Q. What do you mean by that word?

THE COURT: I know what it means.

BY MR. BROWN:

Q. Were there obscenities shouted? A. Yes.

Q. Would you characterize the meeting as being an ordinary one or very unruly? A. Very unruly.

Q. Do you know whether there was anyone representing a newspaper invited into the meeting room? A. I do.

Q. Was there someone representing a newspaper there? A. Yes.

Q. And that person had got in? A. I don't know whether he got in. He talked to us later.

* * *

THEODORE R. FREEMAN, JR.

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

[176] DIRECT EXAMINATION

BY MR. EVELETH:

Q. Please state your name and address. A. My name is Theodore R. Freeman, Jr., 6810 Quander Road.

Q. Are you married, Dr. Freeman? A. Yes.

Q. Do you have any children? A. Two boys.

Q. What are their ages? A. Six and eight.

Q. Do you rent your present residence from Paul E. Sullivan, the plaintiff? A. Yes. I do.

Q. How long have you lived under that lease arrangement? A. Two years.

Q. When was it entered into? A. February 19, 1965.

THE COURT: The lease speaks for itself, counsel.

BY MR. EVELETH:

Q. What is your occupation, Dr. Freeman? A. Agricultural Economist, Foreign Agriculture, Department of Agriculture.

Q. How long have you been so employed? A. Two years.

[177] Q. Please state your educational background and degrees? A. Bachelor of Science in Agriculture and Master of Science in Agriculture Economics, in Praire View, Texas, Doctor of Philosophy, University of Wisconsin, 1965.

Q. Do you belong to any honorary societies? A. Yes, the Phi Delta Gamma.

Q. What is that? A. Honorary fraternity for people occupied in the field of education.

Q. Did you serve in the armed forces? A. Yes, sir.

Q. Do you hold any rank? A. Yes, sir. I am presently a captain in the D.C. National Guard.

Q. Have you been convicted of any crime? A. No.

Q. What church do you attend? A. Catholic Church.

* * *

[178] Q. What is your race, Dr. Freeman? A. I am a negro.

Q. This is the race of your family? A. Right.

Q. Did you attend the special membership meeting of July 29th, at which the membership was to consider the board's action in respect to your assignment? A. No, I attempted to, but I wasn't admitted to the meeting.

* * *

[180] Certificate:

This volume of the transcript was tendered to me June 12, 1967. In the morning mail on that date I received a copy of a letter from Plaintiffs' Counsel, John M. Alexander, addressed to Defendants' Counsel, John Charles Harris, dated June 9, 1967, [180A] advising Mr. Harris that the transcript was being delivered to me, Judge Keith, on the same day. The transcript was left at my office with my secretary on June 9, 1967. I received it June 12, 1967 at 9 A.M.

Signed by me June 20, 1967.

/s/ James Keith
Trial Judge

* * *

[182]

VIRGINIA MOORE

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q. Would you please state your name and address? A. Virginia Moore, 6417 Olmi-Landrith Drive, Alexandria, Virginia, in Fairfax County.

Q. Mrs. Moore, were you president of Little Hunting Park during the entire year of 1965? A. I was.

Q. Were you a member of the board of directors during that entire period? A. I was.

Q. Have you held any other positions or offices with Little Hunting Park, Inc.? A. I was a member of the board of directors for four years. I was assistant treasurer two years, and vice president for one year, and president for one year.

Q. Could you give me the years? Do you remember? A. It was just previous. It was consecutive until [183] 1965. The first two years I was assistant treasurer. The third, I was vice president, and the fourth year I was president.

Q. Did you hold any positions in 1966? A. I did not.

Q. And this year? A. I do not.

Q. How long have you been a member of Little Hunting Park? A. I think we joined sometime in 1958.

Q. During the period of your presidency in 1965, were you familiar with the bylaws of that organization? A. As familiar as any member, I think.

Q. And you are probably a little more familiar since you were president. A. I don't think so.

Q. I believe that we have previously introduced the bylaws and articles of incorporation. How are they marked?

THE COURT: Plaintiffs' Exhibit 39.

BY MR. EVELETH:

Q. I show you Plaintiffs' Exhibit No. 39, which is en-

titled, "Revised Bylaws of Little Hunting Park, dated April 18, 1961." Are those the bylaws that were in effect during that time, during your presidency? A. Yes.

[184] Q. Also attached to the back of that as part of Exhibit 39 are the articles of incorporation of Little Hunting Park, Inc., dated 11/23/54, and as I said, have been admitted into evidence. Were these articles of incorporation effective during the entire year 1965? A. I don't think the articles of incorporation were changed. I have no knowledge of their changing.

Q. With respect to the certificate of incorporation, would you turn to that, please? I am going to read a portion of that and I want you to correct me if I misstate anything in here.

"This is to certify that we do hereby associate ourselves to establish a corporation not organized for profit, in which no capital stock is required or to be issued, under and by virtue of Section 13-220 of Title 13, Code of Virginia 1950, and of acts amendatory thereof for the purpose and under the corporate name."

THE COURT: Are you going to read the whole thing?

MR. EVELETH: No, I am not. "For the purposes and under the corporate name hereinbefore mentioned and to that end we do by this certificate set forth as follows." Does that appear therein?

THE WITNESS: It does.

BY MR. EVELETH:

Q. No. 3 reads, "The purpose of the corporation shall [185] be: (a) To construct, operate and maintain a swimming pool and all necessary facilities appurtenant thereto. (b) To develop, operate and maintain a community park and playground facilities. (c) To lease, own and manage real and personal property for community recreation purposes. (d) To construct and manage any structure necessary to the foregoing purposes. (e) To do any and all things necessary to carry out the above purposes." Does that appear therein? A. It does.

Q. Does this certificate of incorporation set forth any

other purposes than the purposes I have just read? A. There is more here. I haven't read it.

Q. Do you notice any purposes stated? A. No, I don't.

Q. Now, with respect to the bylaws, looking at Article 3, I will again read it and as if it appears thereon. Article 3, Membership, Section 1. Pardon me. Going back, it reads -Going back to Article II, it reads, "Purpose. The purpose of the corporation shall be to own (or lease), construct, develop, operate, maintain and manage suitable facilities for the safe and healthful recreation of the Corporation's members, said facilities to include a swimming pool, a park and such other appurtenances as the Corporation may deem desirable." Does that appear thereon? A. It does.

[186] Q. Are there any other purposes set forth therein? A. There aren't.

Q. In the bylaws? All right, now, referring to Article III of the bylaws, Article III, Membership, Section 1: "Membership in the corporation is, (a) Established by the purchase of a certificate of membership, and (b) Maintained in good standing by the prompt payment of all charges and assessments, and (c) Limited to persons who reside in or who own, or who have owned housing units in the subdivisions presently defined and known as Bucknell Manor, Beacon Manor, White Oaks and Bucknell Heights, and such other area(s) as may be authorized by the board of directors, and (d) Limited to six hundred (600) in number except that exclusive of all other provisions herein, there shall be forty (40) memberships available to residents of the subdivision known as White Oaks, over and above the number of White Oaks memberships of record as of May 1, 1955."

Section 3 of that article reads: "Each membership in the corporation shall be issued to one adult person. If said person be a member of a family unit, the membership, maintained in good standing, shall entitle all members of the family unit to utilize the Corporation's facilities. A family unit is defined as all persons of the same immediate family, including all persons dependent on the holder of a member-

ship and who permanently reside in the same housing [187] unit." Does that appear therein? A. It does.

Q. Would you explain to the Court how a person acquires a certificate of membership or a share in Little Hunting Park, and how such certificates are sold, transferred or assigned? A. They are not all the same. A membership is purchased by making application. The application comes before the board of directors and the board of directors approves or disapproves it. The only assignment that we have at the present time is from an owner to his tenant.

Q. How are certificates sold, if they are sold? Is there such a transaction as a sale? A. Yes, there is a transaction known as a sale.

Q. That is from whom to whom? A. From the corporation. The corporation has a list of memberships that are up for sale. They sell them, and at one time in 1965 only the corporation was allowed to sell a membership, because there were so many for sale.

Q. I don't want you to ramble on. I want you to answer the question. A. I am answering the question.

Q. You are elaborating more than I want you to. How are they transferred? Who are the parties involved in a transfer? [188] A. Either the corporation or an individual upon approval of the board of directors.

Q. When we say a transfer, do we mean a permanent transfer, as opposed to a new certificate? A. A new certificate is used.

Q. Is the procedure for purchasing, selling, transferring and assigning certificates covered by Article 3, Sections 2 and 5 of the bylaws, Mrs. Moore? A. Article 3, section what?

Q. Sections 2 and 5. Let me read these.

THE COURT: Doesn't that call for a conclusion? Doesn't it speak for itself? If it does it does. If it doesn't, it doesn't.

MR. EVELETH: I am trying to find out whether there are any other requirements, other than those set forth in the bylaws.

THE COURT: Ask her that.

BY MR. EVELETH:

Q. Let me read these two. Article III, Section 2 reads, "Each application for membership must be made in writing, and must be approved by the board of directors. In the sale or resale of memberships by the Corporation, applications by residents of the subdivisions specifically named in Section 1(c) shall be given prior consideration before all others." Does it read that way? [189] A. Yes.

Q. And Section 5 reads as follows: "Memberships may be transferred, or assigned for temporary use, as follows: (a) Permanent transfer to another eligible person may be effected, (b) The use of the membership may be temporarily assigned to eligible persons for periods not to exceed one year. Re-assignment to such eligible person is permissible, (c) Transfers and assignments of membership must be by written instrument in such form as prescribed by the board of directors and subject to approval by the board." Does it appear therein as I stated it? A. It does.

Q. Do you know of any other requirements in the by-laws, affecting the transfer, sale, and assignment of shares? A. No.

Q. Does the certificate of incorporation which you have in your hand, set forth any requirements for membership in Little Hunting Park? A. It does not.

Q. Does it set forth any restrictions on the transfer, sale, assignment or use of certificates of membership? A. It does not.

Q. What is the greatest number of membership certificates that any one person now owns in Little Hunting [190] Park? A. Two, I think.

Q. Would it be possible that three would be the answer? A. It could be. I haven't checked the records.

Q. Well, we received—

MR. HARRIS: It is your witness. Go ahead, Mr. Eveleth.

BY MR. EVELETH:

Q. We received a letter from your attorney, who stated three. Would you think that was right?

MR. HARRIS: The witness said, "It might be."

THE WITNESS: I have no knowledge, myself, of that. I have not been a member of the board of directors since 1966.

BY MR. EVELETH:

Q. But people do own more than one membership. Is that correct? There are some people who own more than one membership. Is that correct, yes or no? A. Yes.

Q. Do the bylaws or certificate of incorporation of Little Hunting Park set forth any restriction on the use of the facilities of Little Hunting Park by guests of members or guests of assignees of the membership? An assignee, I take it. A. What do you mean by facilities?

Q. Of the pool or the tennis court. [191] A. If they have been approved, they can use them.

Q. Where does it state in the bylaws that guests must be approved by the board of directors or by anybody else? You see anything in there, Mrs. Moore? A. I haven't finished reading it.

MR. HARRIS: Your Honor, I think the bylaws speak for themselves.

THE COURT: I certainly feel that they do, Mr. Harris.

BY MR. EVELETH:

Q. Do you know of any restrictions, Mrs. Moore of your own personal knowledge? A. I do not. I know the gate has control of who comes in and who does not come in.

Q. What standards do they apply at the gate? Who sets forth who gets in and who does not get in? A. The board of directors.

Q. And is that pursuant to the bylaws? A. I didn't see it in the bylaws. It is pursuant to the good management of the pool for the operation of the membership.

Q. What are the requirements for the guests that people at the gate would impose? A. That they would be over sixteen. If they were coming with someone, under sixteen. Actually, a twelve year old could not bring in a guest alone.

[192] Q. Let us assume that I was a member and I

brought in my brother, who was thirty-five years old and his wife. Would they be eligible to come in? A. Yes, if the pool wasn't over crowded.

Q. Is that all? A. That is all I can recall.

Q. Have the bylaws of the corporation always provided that applications for membership and transfers and assignments of shares are subject to the approval of the board of directors? A. So far as I know.

Q. How many times have membership certificates changed ownership since the incorporation of Little Hunting Park?

A. I would have no knowledge. That is quite a voluminous record to go through.

Q. Was that answered in your interrogatories? A. I don't remember.

Q. Did we refer to them during your deposition? A. I don't remember.

MR. HARRIS: I believe the interrogatories are in the record.

MR. EVELETH: My memory is 1,183.

MR. HARRIS: 1,183 times, there have been changes in membership certificates?

[193] BY MR. EVELETH:

Q. (reading) "The records of the corporation indicate that membership certificates have changed ownership 1,183 times since the incorporation of the defendant corporation."

MR. HARRIS: It is in writing.

BY MR. EVELETH:

Q. Is Little Hunting Park under its bylaws or certificate of incorporation required to buy back membership shares of members who wish to sell their shares? A. No.

* * *

[195] Q. How many sellers told you they couldn't sell to the purchaser of their house? A. None of them actually told me.

Q. That is all I asked. After a share is transferred and the transferee is approved by the board of directors, a new numbered share is issued to the transferee, or does he keep the same number as the transferer had? A. No, he does not. A new certificate is issued.

Q. What becomes of the old numbered certificate? A. I presume the seller still has it.

[196] Q. There are no rights to the corporation with this any more. Is this right? A. That is right.

Q. While memberships are transferable, the share certificates are non-negotiable in the sense that a new numbered certificate is issued. A. A new numbered certificate is issued.

Q. In addition to the 1,183 permanent memberships which you mentioned, how many transfers in Little Hunting Park to the present? A. I don't know.

MR. EVELETH: Mr. Harris, would you agree to 322?

MR. HARRIS: Ask the witness.

BY MR. EVELETH:

Q. I show you the answer to the interrogatories, starting at the beginning answer. A. This figure was not of my knowledge. I had that particular figure prepared.

Q. You say it is wrong? A. No, I wouldn't say it is wrong.

MR. EVELETH: You aren't willing to stipulate to that fact? This is the answer to the question asked in the interrogatories.

THE WITNESS: I did not prepare that particular thing.

MR. HARRIS: The interrogatories are in the record.

[197] MR. EVELETH: They are not in the evidence. They are not part of the transcript.

MR. HARRIS: Therefore, how can I deny them? I am sure His Honor can read them.

BY MR. EVELETH:

Q. The corporation has approved 322 temporary assignments or transfers since the incorporation to the present. When a temporary assignment is approved, is a new numbered share issued to the tenant? A. No.

Q. I see. He has the same certificate as his landlord? A. He does not get a certificate.

Q. But he has the right to use the pool from that certificate? A. If he has been approved.

Q. If he has been approved? A. If he has been approved and made application in writing.

Q. How many times have applications for membership in Little Hunting Park been denied by the board of directors from its incorporation to the present? A. I do not know. Q. I show you Answer 5 to the interrogatories,

THE COURT: She said she did not prepare that.

MR. EVELETH: She may be aware of this fact though. [198] You may refresh your recollection. She must have known. She was vice president and president and everything else.

THE WITNESS: I still did not have the records.

BY MR. EVELETH:

Q. Are you aware of any? A. Any what?

Q. Any denials of membership applications. A. No, I am not.

Q. The answer to the interrogatory stated—

THE COURT: I don't think that is evidence. That was asked for your information and in the preparation of the case. Isn't that right?

MR. EVELETH: I feel it is an admission on the part of the corporation.

THE COURT: You can't prove it by this witness, apparently.

MR. EVELETH: It is an admission by the corporation. She is a member of the corporation. She is liable.

THE COURT: I don't think it is the right way to do it. If you want to read it into the record, and Mr. Harris doesn't object. Do you want it into the record?

MR. HARRIS: I don't know what he is going to do.

MR. EVELETH: (Reading) "The records of the corporation do not always reflect denial of membership. However, in May, 1961 an application was denied but the record does not disclose the [199] reason for such denial. And in our interrogatories, we asked how many applications were denied for membership, and we asked for the dates, the times and under what circumstances and for what reason.

How many times, Mrs. Moore, to your knowledge, have temporary assignments been disapproved?

THE WITNESS: I don't know.

BY MR. EVELETH:

Q. Do you know if they have ever been disapproved?

THE COURT: We all know of one.

THE WITNESS: I wouldn't have direct knowledge of that.

BY MR. EVELETH:

Q. You have direct knowledge of one? A. I don't have direct knowledge of any.

Q. This was out of the interrogatories, Answer 6 to the interrogatories. "Again the corporation records do not always reflect the denial of assignemnt or transfer and there is no record in the Minutes reflecting a refusal of assignment." And we asked once again, have you information stating the reasons therefor, and to that what is the answer? A. No.

Q. Does Little Hunting Park make an annual assessment against each membership share? A. Yes.

[200] Q. Must this assessment be paid to keep the share in good standing and valid where the member uses the facility? A. Yes.

Q. Is it a rule that an assignemnt of membership may be made only from a landlord member to a tenant? A. That is right.

* * *

[201] Q. Did you preside at the meeting of the board of directors, during which the directors voted to disapprove the assignment of Mr. Sullivan's membership certificate to Dr. Freeman? A. Yes, I did.

Q. What was the date of that meeting? A. It was some time in May, I believe. I do not recall the date of the meeting.

THE COURT: What meeting was this, Mr. Eveleth?

MR. EVELETH: I contend it was May 18th.

THE COURT: What meeting was it?

MR. EVELETH: It was a meeting at which the board of directors voted to disapprove Dr. Freeman.

THE COURT: All right.

THE WITNESS: It was a board of directors meeting.

BY MR. EVELETH:

Q. Who was present at that meeting? A. I don't recall. There was a quorum present. We did not conduct the meetings without a quorum.

Q. Do you recognize the signagure of Jewell Gonzalez, your secretary? A. I think I do.

Q. Is that her signature? A. I think so.

Q. And are these the minutes of May 18th? A. [202] It is a copy of the minutes.

Q. It is a copy of the minutes? They were provided by you to us? A. I presume so.

Q. Would you tell me who attended that meeting?

THE COURT: Are you going to introduce these?

MR. EVELETH: I would be happy to.

MR. HARRIS: May I see them first?

MR. EVELETH: I am just asking her who was present?

MR. HARRIS: Are you asking her to testify from the minutes?

BY MR. EVELETH:

Q. Does that refresh your recollection who attended the meeting? A. It says here.

THE COURT: No, that is not the question. The question does that refresh your recollection? These are not your notes, and I don't know that it is proper for her to use those notes to refresh her recollection.

MR. EVELETH: Mark this Plaintiffs' Exhibit No. 40.

THE COURT: Any objection, Mr. Harris.

MR. EVELETH: Take a look and see. One of them is the minutes and that one is the correction of the previous minutes.

MR. HARRIS: No objection.

THE COURT: Let it be admitted into evidence. What is [203] the number?

THE CLERK: 40 and 41.

(The minutes were marked Plaintiffs' Exhibits Nos. 40 and 41 for identification and received in evidence.)

BY MR. EVELETH:

Q. This is the minutes of May 18th, Exhibit 40 and Ex-

hibit 41 is the next meeting, at which these prior minutes were corrected. Would you tell me from the minutes of May 18th who attended that meeting?

THE COURT: Don't the minutes speak for themselves?

MR. EVELETH: It isn't in the record, and we have to establish individual liability.

THE COURT: Isn't it in the record? If it is admitted into evidence, does it become a part of the record?

MR. EVELETH: I don't believe so. It isn't part of the transcript.

THE COURT: I will admit that.

MR. EVELETH: And I am not certain that can be designated.

THE COURT: That becomes a part of the record when they are admitted into evidence. Don't have to be. I don't want to read all of these things, if I don't have to.

MR. EVELETH: It is very important to establish the structure of this corporation.

Will you tell us who was present, Mrs. Moore, with the [204] Court's permission?

THE COURT: Read quickly the names that were present.

THE WITNESS: Mrs. Moore, Mrs. Madsen, Messrs. Johnson, Lennon, Gutow, Egger, Riesgo, Arnette and Donohoe, Treasurer O'Boyle.

BY MR. EVELETH:

Q. You said someone was absent. A. Treasurer, Mr. O'Boyle, he wasn't a member of the board of directors. He was an appointed member.

Q. I see. In the next minutes, do they make any corrections so far as who attended the previous meeting of May 18th? They do not. Is that correct? A. What was your question?

Q. The second meeting, what was the date of the second one, June 11th? A. That is right.

Q. There are certain corrections made in the minutes of the meeting of May 18th. There were no corrections as to who was present at the meeting. Are there? A. No, not any that I can see.

Q. Was the action unanimous? A. I believe so.

Q. At the time the board voted to disapprove the assignment, they were aware that Dr. Freeman was a negro? A. Yes.

Q. Did Dr. Freeman meet all the requirements established [205] by the bylaws for membership? A. Yes.

Q. So that Dr. Freeman's race was his only disqualification? A. No.

Q. What other disqualification appearing in the bylaws or in the articles of incorporation did he not meet? A. According to the bylaws, the board of directors is empowered.

Q. I want to know what qualifications set forth in there that he did not meet.

THE COURT: I would allow the witness to answer. I think she was giving an answer. Go ahead and answer.

THE WITNESS: The board of directors uses the bylaws to run the corporation to the best interests of the membership. The best interests of the membership in this case was not to approve this assignment.

BY MR. EVELETH:

Q. And is that set forth in one of the sections a member has to be in the opinion of the board of directors, et cetera, as you stated? Is that another qualification set forth in the bylaws? A. No, the board has the right to approve an assignee.

* * *

[206] Q. Would you read Article III, Section 6 of the bylaws? Do you have that in front of you?

THE COURT: Hasn't she already read that?

THE WITNESS: Article III, Section 6?

BY MR. EVELETH:

[207] Q. It goes (a), (b), and (c). A. Yes, sir. (a) "A member may for due cause, and after having been granted an opportunity for a hearing, be suspended for a specified period of time or expelled from the Corporation by a two-thirds (2/3) vote of the entire membership of the Board of Directors. (b) Due cause for suspension or expulsion of

a member shall consist of delinquency in payment of any charge and assessments, or of violation of the By-Laws or the Corporation's rules and regulations, or of conduct inimicable to the Corporation's members. (c) Suspension or expulsion shall not operate to relieve a member of any liability to the Corporation. In the event of expulsion, the Corporation shall offer the membership for sale at the stated price (Article VI, Section 2(n)). The expelled member shall be paid the balance, if any, of the proceeds of such sale after deducting therefrom any indebtedness due the Corporation, plus a reasonable fee to cover expenses of the sale.

MR. EVELETH: Mark this please. I have marked here for identification a notice of special membership meeting. Do you have any objection?

MR. HARRIS: No objection.

MR. EVELETH: I can offer it into evidence.

THE COURT: Admitted without objection.

(The notice, marked Plaintiffs' Exhibit No. 42 for identification, was received in evidence.)

BY MR. EVELETH:

Q. Is this the special membership meeting notice? A. It is.

Q. And your name is signed at the bottom? A. That is right.

MR. EVELETH: May I see Plaintiffs' Exhibit No. 21, please?

[208] BY MR. EVELETH:

Q. I also show you Plaintiffs' Exhibit No. 21, which is a petition signed by twenty-one members calling for a special membership meeting. Now, Mr. Sullivan was examined on this yesterday. I want you to read to yourself those two, and let me ask you a couple of questions about it. I don't care about the signatures, who signed it. Have you examined those, Mrs. Moore? A. Yes.

Q. Now, a letter signed by the twenty-one people. It says—I won't read the whole thing, but the purpose of this special meeting shall be, and it sets forth three things: To have the members of Little Hunting Park, Inc. meet Dr.

and Mrs. Freeman. Second, to permit the members to listen to brief remarks by Dr. Freeman, and a vote stating they should be reversed in their refusal to permit the assignment. A. That is right.

Q. The agenda doesn't quite word it that way. Does it?
A. No.

Q. It says, "Should the membership meet Dr. and Mrs. Freeman, and should they listen to the remarks, and should they vote," and at the bottom it says, "The membership shall have the right to vote on each of the points on the agenda." [209] A. That is right.

Q. So when the notice of the special membership meeting says, "The agenda of this meeting, as set forth by petitioner, is this," is that a correct statement? A. Where it says what?

Q. The agenda for this meeting. This is just before one. The agenda for this meeting as set forth in this meeting. Is that the same as the agenda set forth? A. Essentially, it is the same, but it isn't the same wording.

Q. They are not the same wording? Did these twenty-one members suggest that they thought people should vote first before they heard Dr. Freeman? A. I don't know.

Q. And it says, "The purpose shall be to have them meet." It doesn't say that first we vote and then we will meet with Dr. Freeman. Does it? A. No.

Q. Then they are different? A. Right.

Q. Did the members at the special membership meeting, did any members suggest to the rewording of the agenda?
A. They did.

Q. And you ruled them out of order, or did someone rule them out of order? [210] A. (No response)

Q. Did you preside at that meeting? A. I did.

Q. Did you rule them out of order?

THE COURT: She had pandemonium at the time.

THE WITNESS: I don't know who at the time ruled them out of order. I don't have the minutes before me.

BY MR. EVELETH:

Q. Was Dr. Freeman permitted to come into the hall and speak? A. He wasn't in the hall to speak.

* * *

[211] Q. Did you see a copy of a letter sent to Reverend Cassidy? A. I did.

Q. Signed by Paul Sullivan? A. I did.

Q. Purportedly, signed by him, I guess there is no doubt about that. Didn't he indicate in that letter that Dr. Freeman and I visited our pastor, Father Walsh? (Reading) "He suggested that since none of the people had met him, it might serve some good end if Dr. Freeman himself were to approach the Board." Dr. Freeman did request an interview and none was ever granted. And (reading) "The by-laws of the pool corporation provide that twenty members can request a [212] special meeting of the corporation, and I am in the process of getting signatures now." Doesn't the tone of the letter in effect say that Paul Sullivan wanted Dr. Freeman to meet with the members? A. I don't know what Mr. Sullivan wanted.

Q. How do you interpret that letter? A. I don't know. I haven't read the letter.

Q. You haven't read the letter? A. Yes, I have read the letter.

* * *

Q. I want to find out whether you are familiar with the letter, and remember anything being in here. A. This letter is three pages long, and I read this letter two years ago.

Q. Starting with the second paragraph, I don't want you to read it out loud. [213] A. That is what it says here.

Q. Thank you, and you saw that letter? A. Yes, I have seen that letter.

Q. So you probably knew what his wishes were. Didn't you? A. I did not know what his wishes were.

Q. What did you think from that letter what his wishes were? A. That letter to me, I considered. As Father Winger said, put it in the wastebasket.

Q. Fine, thank you. Are you currently employed by St. Mary's Catholic Church? A. I am.

Q. That is the same employment you had in 1965? A. It is.

Q. You haven't been discharged? A. He couldn't afford to discharge me.

Q. I didn't ask you that. Who is Mrs. Simmons? A. She was one of us. I don't know whether she is or not, but she was transfer agent when I was president of the corporation.

Q. What is her relationship, other than that of Little Hunting Park? A. She is a member.

[214] Q. Is she a member of the board of directors? A. No.

Q. Are you familiar with the charges against Paul Sullivan that served as the basis for his expulsion? A. Yes.

Q. Charge No. 2, that you did among other things, conduct an harassment of the president and board members by numerous telephone calls to the president and the board members, indicating to the board members that they are guilty of hatred and bigotry. Is that correct? A. That is correct.

Q. Are you familiar with the answers to the interrogatories? A. I don't recall them at this point. I haven't read them since they were taken.

Q. We asked to find out who the directors were who received these telephone calls from the plaintiff. There was listed: Mrs. Moore, Mr. Lennon and Mrs. Simmons. Would that be incorrect if Mrs. Simmons wasn't a member of the board of directors? Let me show you this. A. She was appointed a member of the board of directors. She was an elected member of the board of directors.

Q. She was an appointed member of the board of directors? Did she vote on anything? A. No, she didn't have a vote on the board of directors.

[215] Q. She was appointed but not voting? When was she appointed? A. I don't recall now.

Q. Take a guess from your knowledge of it.

MR. HARRIS: Your Honor, she said she didn't know. Don't tell her to guess as an answer.

BY MR. EVELETH:

Q. Approximately when, to your knowledge? Do you have any knowledge? A. I don't know whether it was in 1964, 1965 or 1963.

THE COURT: What was she, sort of an ex officio member, because she was a transfer agent.

THE WITNESS: There was so much work involved in the transfer. We felt it was necessary to get someone. I was on the board for four years. I don't recall what year it was.

BY MR. EVELETH:

Q. I show you an issue of Splash. Mark this for identification as No. 43. Mr. Harris?

MR. HARRIS: No objection.

MR. EVELETH: May I introduce into evidence as Plaintiffs' Exhibit No. 43, this issue of the Splash?

THE COURT: Admitted without objection.

(The issue of the Splash was marked Plaintiffs' Exhibit No. 43 for identification, and received in evidence.)

[216] BY MR. EVELETH:

Q. It says, "A list of board members and their assignments for 1965. Does Mrs. Simmons' name appear there-on? A. No.

Q. Look at the back. There is more on the back. Mrs. Moore, is that a publication of your organization, of Little Hunting Park?

THE COURT: Is the lady's name anywhere on there?

BY MR. EVELETH:

Q. Is the lady's name anywhere on there? A. No.

Q. Is that an official publication of your organization? A. Yes, the Splash is.

Q. Thank you. Was Mr. Sullivan expelled from your organization because he made any phone calls to Mrs. Simmons? A. I don't know.

Q. And were you at the meeting when he was voted, or when it was voted on that he would be expelled? A. I was.

Q. Was any telephone conversation, alleged conversation between Mr. Sullivan and Mrs. Simmons discussed at that meeting? A. No, not that I recall.

Q. Did you vote to throw him out? A. I did not vote.

[217] Q. Why was that, Mrs. Moore? A. The president doesn't have a vote.

Q. Thank you. A. Unless there is a tie.

Q. In your capacity as president of Little Hunting Park, did you receive letters from members of the corporation indicating support of Mr. Sullivan's view in respect to Dr. Freeman's assignment? A. I did.

Q. And disagreement with the board's action? A. I did.

Q. How many did you receive? A. At this point, I don't recall.

Q. How many would you say? A. I don't know.

Q. Did you receive, do you think a half as many as a half dozen? A. Four, five or six, I don't know.

Q. Are you familiar at all, or do you remember anything at all about the contents of these letters? A. No.

Q. Do you remember whether they expressed disapproval? A. They expressed disapproval.

Q. With the board's action? Did they express this in strong words? [218] A. I would have to reread the letters. It has been two years ago. I don't know.

Q. Do you remember when you received these letters, the date? A. No, the dates, no, sometime in 1965.

Q. Sometime in 1965? Would you know? Would you remember when in relation to the board's decision that there was good cause to expell Mr. Sullivan, and that he would be notified of a hearing? There was a meeting in which you decided there was good cause and he would be granted a hearing. Is that right? A. On June 8th, I believe it was. I received a telephone call from Mr. Freeman. He asked for a meeting with the board of directors.

Q. That is not answering my question. I asked you was there a meeting in which the directors decided there was due cause for Mr. Sullivan's expulsion? A. Yes.

Q. And you would grant him a hearing, and these letters when did you receive them in relation to this hearing? A. I don't know the date of the letter.

Q. I didn't ask you that. I asked you, was it before or after that? A. No, I don't know.

MR. EVELETH: Will you mark these for identification?

[219] MR. HARRIS: Your Honor, these are letters ap-

parently from members that were received by Mrs. Moore, and as offered are hearsay, and I would object to their materiality, except I would not object to their admission if counsel for the plaintiffs were offering them all. There were five times as many letters that came in in favor of the board of directors, if you want to combine them.

THE COURT: Do you want to put them all in?

MR. EVELETH: I have no objection. Let us get everything on the record.

Would you look at the dates of these letters and tell me whether this refreshes your memory about when you received them? Did you receive them shortly after the dates listed thereon? I want you to look at the distribution. Does that refresh your memory as to when you received these letters?

THE WITNESS: I would presume I received them shortly after the date. I have no knowledge of the dates of them.

BY MR. EVELETH:

Q. Do you know whether any letters were received by you or by members of the corporation to your knowledge, expressing disapproval of the board's action, received prior to the vote in which you decided there was due cause for Mr. Sullivan's expulsion? Do you understand my question?

A. Not really.

Q. If you don't, just ask me.

[220] THE COURT: Didn't you mean whether they decided? There was a hearing and another one when they expelled him. Which meeting are you referring to?

MR. EVELETH: I am referring to the first meeting.

THE COURT: July 7th.

MR. EVELETH: In early June?

THE WITNESS: It is June 11th.

BY MR. EVELETH:

Q. It is June 11th? A. That is right.

Q. You say it was June 11th. Is that correct? A. I think that is what the minutes here stated.

Q. Did you receive any letters prior to that meeting in which members expressed disapproval of the board's action?

A. I would imagine I received most of those, because they are all dated June 9th, 10th and 11th.

Q. And after receiving these letters, you decided there was good cause for expelling? A. I didn't decide there was good cause for expelling.

Q. Did the corporation decide after receiving these letters? A. They decided to consider his expulsion.

Q. They must have considered there there possible grounds for his expulsion in order to have a hearing. Is that right? [221] A. That is right.

Q. And did these letters form the basis for that? A. Not entirely.

Q. Part of it? Did people use very strong language in these letters? Do you think? A. I don't know. I haven't read them for two years.

Q. You have a letter before you, Mrs. Moore, signed by Paul Scott Forbes. Is that correct? A. Yes.

Q. Dated June 10, 1965? A. Yes.

Q. And does he use these terms?

MR. HARRIS: Are we going to read all these letters?

MR. EVELETH: No, I don't intend to. I use the strongest ones I can. "My wife and I, members of Little Hunting Park, Inc. were shocked and dismayed by the narrow minded and totally unjustifiable action of the board in arbitrarily excluding a qualified membership holder on the basis of race." Does it say that?

THE WITNESS: That is what it says.

BY MR. EVELETH:

Q. "This flagrantly unchristian violation of the scriptural admonition, "Do unto others as you would have them do unto you," cannot be justified on any grounds and casts an ugly shadow of bigotry on our community, which is [222] undeserved." Does it say that? A. Yes, sir.

Q. On the next page, it says, "Even if this were not so, the board's action is un-American and sullies the memory of the thousands of Americans who died in the revolution, in the Civil War and in World War II to preserve the idea that all men are created equal, and that human rights must

always come before property rights." A. That is what the letter says.

Q. At the end, it says, "I pledge to take all measures possible—including legal ones if necessary to attain these ends." Is that pretty strong? A. Yes, sir.

Q. As strong as Mr Sullivan's alleged action? A. Yes, sir.

Q. You didn't expell Mr. Forbes. Did you? A. No.

Q. Would you look at the letter of June 10th? Mrs. Ellis signed this, Mrs. Richard C. Ellis. Do you see that? A. I don't have them.

Q. I thought I gave them all to you.

THE COURT: Have these letters been all admitted into evidence?

MR. EVELETH: Yes, Your Honor.

I think you were talking before, Mrs. Moore, in terms [223] of your interest in the community and the corporation's financial stability, or something of that nature. You are talking about the board of directors has a great interest, aside from who is set forth here or who is to be admitted, and who is not. Didn't you say something in this nature about you were concerned about the investment of the corporation.

THE WITNESS: The investment of the individual in the corporation, and we were charged with preserving their investment. I said nothing about the community.

BY MR. EVELETH:

Q. Does Mrs. Ellis' letter read, "I see no mad rush to move out of Bucknell since the Freemans moved in, no empty houses, no panic." A. She doesn't live there. How does she know.

Q. When did the Freemans move in? A. I have no idea when the Freemans moved in.

Q. (Reading) "The houses on Beacon Hill Road and those behind Rollins Drive add to the appearances of Bucknell and all are lived in and kept neat by Negroes. The school has had no problem integrating—why make an issue of the pool?" A. It says that.

Q. (Reading) "I have met Ted and Laura Freeman and their little boys and I not only like them, I think they are an asset to our community and therefore eligible to swim in our pool." [224] A. It says that.

Q. Did you find Dr. and Mrs. Freeman the same way? Did you get the same impression of them? A. I have never met them.

Q. I see.

THE COURT: Plaintiffs' Exhibits Nos. 44 through 48. (The letters, marked Plaintiffs' Exhibits Nos. 44 through 48 for identification, were received in evidence.)

BY MR. EVELETH:

Q. Isn't it a fact, Mrs. Moore, that the corporation has never expelled anyone other than for nonpayment of assessment, with the exception of Mr. Sullivan? A. I don't know that to be a fact.

Q. Do you know of any expulsions aside from Mr. Sullivan and nonpayment of assessments? A. I don't know of any except Mr. Sullivan.

Q. Were you pretty annoyed with Mr. Sullivan because he was attempting to overrule the board's action? A. No, I wasn't.

Q. You weren't annoyed? A. No.

Q. It didn't bother you at all? How do you mean that?

[225] Q. Were you annoyed, upset? A. I was annoyed when he sent that letter to my employer.

Q. Were you upset at his attempt to get the members in a special membership meeting to overrule the action of the board of directors? A. It is his privilege, or was his privilege to call a special meeting. I wasn't annoyed at that.

Q. You were not annoyed at that? A. No.

Q. Weren't you annoyed? It was a small group of people.

MR. HARRIS: 21 people.

BY MR. EVELETH:

Q. That were forcing your action in this. A. No, that was something that was required.

Q. Didn't it bother you? It was such a small group. A. No.

Q. Didn't you recommend to the board of directors that they require ten percent of the members? A. I don't believe I did.

Q. To call a special meeting. Ten percent of the members would be sixty. Wouldn't it? A. I don't believe I did.

Q. Is this signed by Mrs. Gonzalez? [226] A. Yes.

MR. EVELETH: Mark this for identification, 49, the minutes of the meeting of the board of directors, 16 November 1965.

THE COURT: Are you going to present that in evidence?

MR. EVELETH: Do you have any objection?

MR. HARRIS: No objection.

(The minutes were marked Plaintiffs' Exhibit No. 49 for identification.)

BY MR. EVELETH:

Q. It says in here, "Mrs. Moore made the following suggestions for the coming year." No. 3 is, "Bylaws should be revised to require fifty persons signing a petition to cause an action. Twenty people is too small a percentage of the membership. It is felt that ten per cent should be a figure required to call a special meeting of the membership. There was discussion on this subject, with no firm agreement reached. There is to be more discussion on the matter at a later date."

THE COURT: What is that, a copy of the minutes?

MR. EVELETH: That is correct.

THE COURT: Are you going to put that in evidence?

MR. EVELETH: I offer that in evidence. Mr. Harris hasn't objected.

THE COURT: It will be admitted.

THE WITNESS: Those are as a suggestion.

BY MR. EVELETH:

[227] Q. I see. What date, after the expulsion hearing was held, did the board vote to expell Mr. Sullivan? A. I don't recall the date.

Q. Could it have been the 24th of August, 1965? A. It could have been.

MR. EVELETH: Mr. Harris, do you have any objection to these two documents? I ask the clerk whether Exhibits 44 through 48 have been admitted into evidence. They have been? These letters were?

MR. HARRIS: Yes, they have. They are admitted.

MR. EVELETH: Is everything else we have marked, admitted?

THE CLERK: 50 is admitted. 49 is still out.

MR. BROWN: There seems to be a lot of confusion. Off the record.

(Further discussion was held off the record.)

MR. EVELETH: On the record. Mr. Harris, do you have any objection to Plaintiffs' Exhibits Nos. 50 and 51? Plaintiffs' Exhibit No. 50 is a special meeting of the board of directors, 24 August 1965. These are the minutes signed by Mrs. Gonzalez.

THE WITNESS: Those are the minutes signed by her.

(The documents, marked Plaintiffs' Exhibits Nos. 49, 50 and 51 for identification, were received in evidence.)

BY MR. EVELETH:

[228] Q. Who was present at that meeting? A. Mrs. Moore, Mrs. Madsen, Messrs. Donohoe, Egger, Gutow, Arnette and Lennon.

Q. Who was absent? A. Mr. Riesgo, Mr. Johnson and the treasurer, Mr. O'Boyle.

Q. Was the vote taken on the motion to expell Mr. Sullivan, and was that vote unanimous? A. It was.

Q. What facilities does Little Huting Park, Inc. operate besides the swimming pool? A. A tennis court.

Q. Does it have a bath house? A. Yes, sir.

Q. Have a concession stand? A. Yes.

Q. How many acres would you say, three or four? A. I don't know.

Q. Does Little Hunting Park belong to the Northern Virginia Swimming League? A. I believe so. I think they are a member.

* * *

[229] MR. EVELETH: She said Beacon, not Bucknell.

THE WITNESS: I did not specify Beacon Manor, specifically because I have no knowledge of Beacon Manor. I live in Bucknell Manor. I was talking about Bucknell Manor, and I am discussing Beacon Manor, as president of the corporation.

BY MR. EVELETH:

Q. Did you say people could not afford to do it? A. That is right.

[230] Q. Would that be in a particular subdivision that they could not afford to do it? A. I know a lot of them in Bucknell Manor who could not afford to buy a membership. On my street, I am the only one who owns a membership.

* * *

MR. EVELETH: On the record, Mr. Harris and I have entered into a stipulation that the following is correct. The question is: "State the number of members the defendant corporation has had each year from 1955 through 1966. In answering, state the number at that time in each year when the membership was at its greatest." And the answer: The number of members of the defendant corporation each year, at the time the membership was greatest for the year 1955 through 1966 is as follows: 1955, 490; 1956, 517; 1957, 552; 1958, 552; 1959, 600; 1960, 600; 1961, 600; 1962, 600; 1963, 600; 1964, 566; 1965, 564, and 1966, 549.

[231] Do you so stipulate?

MR. HARRIS: I so stipulate.

* * *

[234] REDIRECT EXAMINATION

BY MR. EVELETH:

Q. You refer to Mr. Harris' recommendations to you in respect to the special membership meeting. A. Yes, sir.

Q. And the call on the agenda of the meeting? A. Yes, sir.

Q. These are the minutes of 20 July 1965. Would you read the marked portions out loud? A. "In connection with the scheduled special meeting of the membership for July 29th, Mr. Harris stated that we may be on better ground to permit all three requested items to appear on the agenda for the meeting. If we eliminate the first two items, it may in some way be construed to be unfair and give the 20 members reason to again petition the board. It was agreed then that all three requested agenda items be presented to the membership at the special meeting, however, that they would be rewritten to put them into correct resolutions, keeping them as near as possible to the original form (a copy of the letter to the membership with the agenda [235] items listed along with letter signed by 20 members, requesting a special meeting are filed in a special file)."

Q. You spoke about rules and regulations covering guests to Mr. Harris. Mr. Harris asked you if there were any regulations covering the membership's guests. A. Yes.

Q. Were these regulations any different than what you stated to me? A. I don't think so. I don't have a copy of the regulations. I don't recall them.

* * *

MR. HARRIS: * * * [239] Now, we go to the question of race. I say the reason the board, and we haven't heard this. There has been conversation from the complainant that the only reason they did this was because of Dr. Freeman's race. This is immaterial. I believe that if it is a non-profit association, the reason is immaterial.

We know that if this Court decides, it is going to rule [240] on the admission of a member or the expulsion of a member from a non-profit corporation. The black ball as we know it in most organizations, is no longer legal. The Masons and the Knights of Columbus use the black ball, and fifth other secret groups throughout Fairfax County select their members.

The board said they were motivated. In the letters and by the admission of Mr. Sullivan, they were motivated by

economics, and I don't think that we even have to put on evidence to the fact that there is a reluctance on the part of people to buy a house next door to a negro. There is also a reluctance upon people, of white people, to join an organization that is integrated.

I can see a person's concern over a negro's moving in next door to them, but I don't consider myself a bigot or a racist, but I can see the monetary loss to the particular person whose house is next door to a house sold to a negro. The same thing is shown in the evidence of the membership over the years in this organization, and the last three years the membership has been dropping. Therefore, the availability of membership is greatly exceeding the demands. Now, if a negro is elected to membership, then you are going to find the demand is going to drop.

I think the Court will take judicial notice of it. Whether it is right or wrong, is not the problem. * * *

* * *

[241] THE COURT: All right, Mr. Brown.

MR. BROWN: * * *

* * *

[244] [MR. BROWN] In the case of a special membership meeting, the court there is very careful to point out that an association may not enforce a requirement on its members that is immoral or contrary to public policy or the law. It is judicially recognized, and we will be very pleased to supply the Court later with numerous authorities on this fact, that an association may not force on its membership that the membership forego constitutional rights.

One of the most esteemed constitutional rights is the right of freedom of speech. A member may not be expelled from an association for the exercise of freedom of speech. To do so is to go against the Constitution. It is legend where the courts have suspended the rights of members to express their [245] views in opposition to the leadership of the association. Members may not be expelled merely because they do not accept the leadership's point of view, or they take steps to override the leadership's de-

sire to terminate the association. Members, therefore, may express their point of view within the association. They may seek to gain support in their position from fellow members, and indeed they may go outside the association. The cases show that a member of a association may go outside the association. He may go to a public place or take court action because of some policy which may have been adopted, and he may not be forcibly expelled for it.

These are rights guaranteed to him by the Constitution, and in joining a private association, he does not contract to forego his rights. * * *

* * *

[247] We have a detailed argument starting from the Virginia corporation law, whereby we assert and will demonstrate that there is no authority in this association to impose a racial restriction; that its certificate of incorporation does [248] not permit it. Its bylaws do not permit it, and under the Virginia Corporation Act its restriction is ultra vires, and that goes to Count 2. * * *

* * *

[249] JOHN R. HANLEY

was called as a witness on behalf of the defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. Please state your name and address. A. John R. Hanley, 8326 Bound Brook Lane, Alexandria, Virginia.

Q. Are you a member of Little Hunting Park, Inc.? A. I am.

Q. State how long you have been a member. A. I was a charter member.

[250] Q. From the beginning? A. 1954 or 1955, I don't know which.

Q. Have you served in any offices in the corporation? A. Yes.

Q. What offices were they? A. I served two years as

treasurer, one year as president, and one year as park administrator, and three years on the board of directors.

* * *

[251] Q. What year were you president of the organization? A. 1961.

Q. At that time, was there a revision of the bylaws? A. Yes, there was.

Q. Were you familiar with the prior bylaws? A. Yes.

Q. Was there any provision in the prior bylaws prior to the revision in 1961, requiring that all memberships be approved by a board of directors? A. Yes, in the bylaws.

Q. And of April 18, 1961, was this provision carried on? A. Yes, sir, that was incorporated.

[252] Q. Has it always been a requirement that anyone applying for membership or assignment be approved by the board of directors? A. Definitely.

Q. Now, I direct your attention to Article III, Section (d) of the bylaws in reference to the number of members, and it says that the maximum number is 600. A. Yes.

Q. And they are restricted to certain subdivisions? A. Well, 3(c) provides that.

Q. Did I say 6? A. Yes.

Q. I am sorry. Was there any reason for limiting these memberships to the particular locality? A. Well, I am afraid I can't say. I found that from experience is the thing. It was at the time it was originated.

Q. Do you think it was at the convenience of the people in the area, since this was where the pool was? A. It was probably felt that these would be the people who would profit more from it, and it would be the area from which we would draw from.

* * *

[253] Q. Do you know how many families there are in Bucknell Manor? A. I can only give an estimate. Approximately 750, I believe.

Q. How about Beacon Manor, is that equally large? A. Bucknell Manor and Beacon Manor are considered the [254] same.

Q. How about White Oaks? A. I am not sure. I don't know.

Q. How about Bucknell Heights? A. Bucknell Heights is 174.

* * *

Q. All right. Now, directing your attention to the 29th of May, 1965, did you have occasion to visit Mr. Sullivan in his home? [255] A. Yes, I did.

Q. Who accompanied you on that visit? A. Mr. Leroy Lennon and Mr. Oskar Egger.

Q. What was your purpose in making this visit to Mr. Sullivan? A. To carry a proposition to him from the board.

Q. Were you appointed by the board as a committee to go and see Mr. Sullivan? A. Yes, we were.

Q. What was the proposition were you talking to him? A. In the letter which Mr. Sullivan had sent to the board, he had complained about the economic aspects of the rejection of his assignment. That is, that he had the membership. It could not be used, and because he would be faced with the economic position of paying for something that could not be used, now the board determined, and an offer was made to buy this second membership from him so he would not be faced with this.

Q. How long did you stay in Mr. Sullivan's home? A. I would say thirty to forty-five minutes.

Q. And during that time was there discussion between you and Mr. Sullivan and Mr. Lennon and Mr. Egger? A. Yes.

Q. And what was Mr. Sullivan's attitude toward you? A. If I might characterize it, I felt sort of like [256] the errant school boy before the head school master.

Q. Do you think his conduct was insulting toward you? A. Yes, I think it was definitely insulting toward me.

Q. Was it rude? A. Yes.

Q. Do you remember some of the statements he made?

A. He said several times he was ashamed of us. He used the words, immoral and sinful. Our behavior was shocking, things of this nature.

Q. When using the words, sin, evil and immoral, did he apply them to you or to the board of directors? A. That would be hard to characterize. The terms used could be either singular or plural, of course, so I couldn't actually say. I didn't want to get too involved in this.

Q. Was he emotional at this time? A. No, I think he kept things under control pretty well that way. He did speak rather sharply on a couple of occasions.

* * *

CROSS EXAMINATION

BY MR. EVELETH:

* * *

[257] Q. The May 28th meeting at Mr. Sullivan's house, you said he had an insulting attitude toward you. A. I think I considered it so.

Q. Were you pretty upset by what he said? A. I was upset. Enough so that when I left his home, I wasn't concerned what he thought of me.

* * *

[258] VERNON LEROY LENNON

was called as a witness on behalf of the defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. State your name, and address, please. A. Vernon Leroy Lennon, 2316 Woodlawn Lane, Alexandria, Virginia.

Q. Are you a member of Little Hunting Park, Inc.? A. I am.

Q. How long have you been a member? A. I hold Certificate 100. I am one of the original members.

* * *

[259] Q. Directing your attention to the 28th of May, 1965, did you and Mr. Egger and Mr. Hanley go to see Mr. Sullivan at his home? A. Yes, sir, we did.

Q. What was the purpose of your going there? A. The purpose was two-fold. The first, of course, he had received

notification of the rejection of his assignment, and he had requested an explanation from the board, and for this reason I gave him a call and set up an appointment, and we visited his home.

Q. Now, at this time were you a member of the board?

A. Yes, I was.

Q. Were you also membership chairman at this time? A. Yes, I was.

Q. Will you explain what transpired at this meeting with Mr. Sullivan? A. We entered the home and Mr. Egger had known the Sullivans for some time and introduced us, each one, and then we went into a discussion as to the problem of his membership, discussing, of course first his having a membership that had been rejected, both phases of it, Mr. Freeman and also the economic factor. This was mentioned.

MR. BROWN; I am afraid I can't hear the witness.

BY MR. HARRIS:

Q. Will you speak up? [260] A. There was a discussion as to the economic impact that it would make by rejecting him, and also the right of the board to accept or reject applications for membership, or assignments.

Q. How about his attitude at this time? A. He responded with the action, our action was shocking, and he was personally ashamed of us for our actions were immoral, sinful, this type of thing, and when he got to this point, I suggested that we leave. I, personally, resented being exposed to this treatment.

* * *

Q. Let's skip over to the special meeting of the membership, which was held on July, 1965. Were you in attendance at that meeting? A. Yes, sir.

* * *

[261] Q. How many people were in attendance at that meeting? A. There were 300. There was an actual count at this time. I wouldn't like to be held to account. I believe there were 308. That is 308 membership represented. That is up to 616 persons.

* * *

[267] CROSS EXAMINATION

BY MR. EVELETH:

* * *

Q. Did you testify that only members of the corporation were present at that meeting? A. Yes, sir, to my knowledge, there were only members present.

* * *

[268] Q. Was membership in your corporation issued only to adults? A. The membership certificates bear only adult names.

Q. Does that membership apply to the bylaws? You don't have anything before this. Are these normally issued to the male in the household? A. In the majority, the males usually apply. It doesn't necessarily apply.

Q. To the families, then? A. They would be entitled to.

Q. They wouldn't be per se members, the person who receives the membership for the member? A. This person and his family are a member of the corporation.

Q. Each individual is a member then? They would not have a vote as such. There is only one vote per each membership. They are all entitled to the privileges of the park.

Q. Who exercises the privilege? A. Either member. It would have to be an adult member.

Q. I see. Were there women and children at this meeting? [269] A. Possibly some individuals brought their children.

Q. You were there. A. Yes, I would say possibly if someone didn't get a baby sitter, they may have brought the child. I imagine out of that number you would find that fact.

Q. Do you remember a Mrs. Linda Tarr's being at the meeting? A. Yes, I do.

Q. Did you speak to her? A. Yes, sir.

Q. Did you ask her to identify herself? A. Yes, sir.

Q. Did she identify herself as not being a member? A. She identified herself.

Q. And you said, since she wasn't a member, she couldn't speak? A. Right.

* * *

[270] Q. Was a vote taken on these three propositions on the agenda? A. Voted by acclamation.

Q. You mean they did not write it down? A. No, because the feeling was overwhelming.

Q. Was there a hand count? You have the vote taken, 300 to 1. Did they actually count hands that were up, or was it acclamation? A. I believe it was one or the other. At this point, I wouldn't swear as to which it was, to be real honest with you. It seemed I counted hands, but I wouldn't be sure, because it might have been by voice vote.

Q. Then if it was a voice vote, then there would be voices of children and women who were not members. Is that right? A. Again, if there was a vote of everybody present by acclamation.

Q. So people who were non-members were voting? A. The only instance I know of anyone in there is of [271] Linda Tarr and small child. There were not enough children there.

Q. How many would you estimate? A. I wouldn't attempt to estimate.

Q. They didn't talk, didn't yell out? A. I did not say this.

Q. Did they yell out? A. There were not enough children, and I noticed it.

Q. What do you mean, not enough? A. I didn't pay any attention to children. There were not enough of them that I notice there being children there.

* * *

[272] Q. All right, Count 2, "That you did instigate and conduct—" It was referring to Mr. Sullivan, "and cause others to instigate and conduct a harassment of the President and board members by numerous unfriendly telephone calls to the President and board members, indicating in such calls that the board members were guilty of hatred and bigotry." Did you receive such a phone call from Mr. Sullivan? A. I did talk to Mr. Sullivan on the phone.

[273] Q. Did you receive a phone call that meets this description? A. I received a phone call from Mr. Sullivan in one instance.

Q. What did he say in that telephone call? A. He called in reference to meeting the secretary of the corporation to review the corporation's records. He was very upset because she could not meet him at a time when he felt that she should. It was inconvenient for her, and so he called me to tell her to.

Q. He was requesting the books of account or minutes of the meeting? A. Something of that nature.

Q. He had a right to do that in the bylaws. A. Yes, sir.

Q. And he accused you in that telephone conversation of being guilty of hatred and bigotry because— A. I wouldn't go along with him, so he didn't say anything.

Q. This charge says—

MR. HARRIS: The charge doesn't say specifically that Mr. Sullivan made these statements. It says that you did instigate and conduct and cause others to instigate and conduct and by numerous unfriendly telephone calls.

THE COURT: He said he didn't say anything in this [274] telephone call.

THE WITNESS: No, he didn't.

BY MR. EVELETH:

Q. Do you know of any telephone calls that you made to him or he made to you that he did what was charged in this statement?

THE COURT: Or anybody else?

THE WITNESS: Others did, persons who would not identify themselves.

BY MR. EVELETH:

Q. Mr. Sullivan? A. Mr. Sullivan became impatient on occasion, but he did not accuse me of hatred or bigotry in the phone calls.

* * *

[277]

OSKAR EGGER

was called as a witness on behalf of the defendants, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. State your name and address. A. Oskar Egger, 7003 Stanford Drive, Alexandria, Virginia.

[278] Q. Are you a defendant in this case? A. Yes, sir, I am.

Q. Were you a member of the board of directors at the time of the expulsion of Mr. Sullivan? A. I was.

* * *

[280] Q. On the 28th of May, you visited Mr. Sullivan in his home? A. I did.

Q. In conjunction with Mr. Lennon and Mr. Hanley? A. I did.

Q. Will you tell the Court what happened on that particular occasion? A. The purpose of our visit was because Mr. Sullivan requested an explanation of the rejection of the assignment of his other membership to Mr. Freeman, and we thought we better go over and visit with him to perhaps see what we could explain. In addition to that, Mr. Sullivan mentioned he was put in an adverse position because here he had leased his house according to his own terms and the membership was supposed to go, according to his feelings, with the lease, [281] which is apart from the fact that it isn't. It would be a conditional thing that the membership would go with it. However, we felt it was necessary to be fair, since we are not permitting him to transfer it with his lease. We must go over and offer to purchase his membership, since it is putting him in a predicament.

Mr. Hanley spoke to Mr. Sullivan and said he was willing to buy back his membership. Mr. Sullivan said that he disapproved of the action of the board and was told he could. There was some discussion about Mr. Freeman's being a

negro, and also some discussion about the economic aspects.

I, personally mentioned the fact, as a representative of the club, of the corporation, being on the board, that I felt it was in the best interests for economy sake to disapprove the assignment, and apparently Mr Sullivan did not agree with my thinking. He did say he was rather surprised to see me as being part of this group on the board of the people who made the decision to disapprove it.

Q. Why did he say that? A. Why did Paul say this, because we were members of the same church.

Q. Do you remember any words he said at this meeting? A. He did say he was shocked and ashamed. I don't know whether it was the action or we, as individuals, were [282] immoral and sinful. I don't see much difference that my action is immoral and I am not.

Q. The three of you did explain to him the economics involved? A. Well, I had explained this to Mr. Sullivan previously.

Q. What was his reaction to your statement, that it was a question of economics? A. Well, he wouldn't accept it.

Q. Did he doubt your veracity? A. Well, if he doesn't accept the way I think, I would say he questions me.

* * *

[283] Q. All right, go ahead. A. He questioned my pastor, sitting there in the living room of a home where he went to try and get a signature on the petition. He questioned, "What is the priest doing about it?"

Q. Did you have occasion talk to one, Aileen Winters? A. I did.

Q. She is one of the persons to whom it is alleged that Mr. Sullivan was rude, insulting. Had she informed you prior to the meeting of the board, that he was rude to her?

THE COURT: That is hearsay.

MR. HARRIS: He was sitting as a judge on that board. I am trying to find out what evidence was presented to him, just as Your Honor was a moment ago.

THE COURT: I think you can say that she appeared at the meeting, but not what she said.

MR. HARRIS: I don't think the rules of evidence apply to the board of directors.

THE COURT: No, you asked what she said.

BY MR. HARRIS:

Q. Did you talk to her before you went to this expulsion meeting? [284] A. In August?

Q. In August. A. Yes, and her brother.

Q. And you also talked to her brother? A. Yes.

Q. Her brother was present, as I understand it, when Mr. Sullivan came in? A. I don't know in what part of the room, but I remember from yesterday's testimony that he was in there.

Q. Did you report the result of your conversation with Mrs. Winters and her brother to the board? A. Yes, I mentioned it to some board members.

THE COURT: At the meeting, is what you meant?

THE WITNESS: Oh, at the meeting, at the meeting for the hearing. The meeting was geared mostly to Mr. Sullivan.

BY MR. HARRIS:

Q. Did you report it to the board prior to the meeting?

A. Prior to the meeting, yes. It wouldn't have been mentioned in the stipulation if I hadn't.

* * *

[285] CROSS EXAMINATION

BY MR. BROWN:

* * *

[286] Q. On the occasion of August 17th and the hearing before the board, at which the board considered Mr. Sullivan's expulsion, you said that it was geared to Mr. Sullivan's presenting his case. Is that correct? A. We granted Mr. Sullivan a hearing so that he could tell the board why we didn't have grounds to expel him.

[287] Q. Aside from what is stated in the correspondence in the charges, you say Mr Sullivan presented his side of the story? A. We granted him a hearing to give us reason why he should not be expelled, or what action we could take on the expulsion.

* * *

[289] Q. Aside from these papers that were before you, did anyone appear as his witness to support the charges against Mr. Sullivan? A. How do you mean that?

Q. Did anyone appear that he could have questioned or his lawyer could have questioned? A. That he could have questioned?

Q. Or his lawyer. A. He brought witnesses with him.

Q. Did anyone appear to support the charges of the board that Mr. Sullivan's lawyer would have been in a position to question? A. No, it wasn't a legal type of cross examination. It was the board of directors giving one of the members a hearing. It wasn't a matter of him requesting a court.

* * *

[291] THE COURT: But all he would have is just a copy of the charges against him. Nobody was there to answer any questions.

THE WITNESS: In this particular occasion of his defense, certainly he could defend himself.

THE COURT: Did he undertake or did anybody undertake to back up these charges against him?

THE WITNESS: The board members made those charges.

* * *

[292]

JEWELL GONZALEZ

defendant, was called as a witness in her own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. State your name and address, please. A. Jewell Gonzalez, 2701 Easterly Drive, Alexandria.

Q. Are you a member of Little Hunting Park, Inc.? A. Yes.

Q. And you hold an office with that corporation? A. Yes.

Q. And what office do you hold? A. Secretary.

Q. Now, as secretary, you have charge of the records of the corporation? A. That is right.

Q. Are you a member of the board of directors? A. Not a voting member.

Q. In other words, you are not elected as a member of the board of directors? A. No.

Q. But you do sit on the board meetings? A. Yes, sir.

Q. What do you do, take records of the minutes of the [293] meetings? A. That is right.

Q. You have information pertaining to the business of the corporation? A. Yes, sir.

Q. Now, were you present at the special meeting of the membership, held on the 29th of July, 1965? A. No, I wasn't.

Q. Were you present at the general meeting of the membership of the corporation in October, 1965? A. I am sorry. I thought that was the same meeting.

Q. No, this was in October, the general meeting, the general meeting of the membership. A. A special meeting that was called?

Q. No, the general meeting. You had a special meeting in July, and the annual meeting. A. The annual meeting, yes, I was there.

Q. At that time was there any resolutions passed concerning the actions of the board of directors during the prior year? A. Well, there was. The membership showed their support of the board of directors in what they had done.

Q. This is the annual meeting. I show you an extract of the minutes of the meeting of October, 1965, and there is a signature on the bottom line. Is that your [294] signature? A. Yes.

Q. And that is a true and exact extract of the meeting? A. Yes.

MR. BROWN: We have a set of the complete minutes of this meeting. We would like to compare those with. We would like to find them. We have them somewhere. No objection.

THE COURT: Let it be admitted.

MR. HARRIS: Defendants' Exhibit No. 2, Your Honor.

(The minutes, marked Defendants' Exhibit No. 2 for identification, were received in evidence.)

BY MR. HARRIS:

Q. Will you tell the Court what occurred at that particular meeting in reference to this particular resolution? A. I am sorry. I will have to read this, because I have not read the minutes since that time. I don't know what you want me to say, except what was recorded here.

MR. HARRIS: Read what was recorded then.

MR. BROWN: I object. It is unclear to me what particular resolution you are talking about. Are you talking about the one that he considered? The membership gives a [295] vote of confidence. Is that the one you are talking about?

MR. HARRIS: It is the same one.

MR. BROWN: Is that the particular resolution, or is it the second one, the discussion going on about selling stock, or buying stock?

MR. HARRIS: I am talking about the particular one.

MR. BROWN: I don't object to that, but I do object to the rest of it.

MR. HARRIS: I think I will put this part in.

MR. BROWN: I do object to the part about the treasury stock and that discussion.

BY MR. HARRIS:

Q. Did you type this? A. Yes.

Q. The particular motion we wanted, we are interested only in the first part. The rest was what came in.

MR. BROWN: I have no objection to this extent, if you are not offering the second part.

MR. HARRIS: The second part has no bearing on the first occasion, and it is about buying stock.

MR. BROWN: Will you agree that it isn't being offered for what it says? That is the discussion about the treasury stock?

MR. HARRIS: No, we aren't concerned with that.

THE WITNESS: The vote of confidence of the actions [296] taken by the board during the year, and this was an-

other way for the membership to show that they did approve of what the board had done through the year.

* * *

[297] [BY MR. HARRIS]

Q. Again, are you familiar with the board of directors denying membership to any person other than Mr. Freeman?

A. Not since I worked for the board, that I can recall.

Q. Did you have occasion to work at the meetings to determine whether or not there was actually a denial of membership in the past? A. I am sorry. I can't recall if I saw it in the minutes.

THE COURT: You mean whether there was anybody else expelled or rejected admittance?

MR. HARRIS: Refused membership.

THE WITNESS: Someone has been refused membership, but whether I saw it written in the minutes, I can't say.

BY MR. HARRIS:

Q. But someone else has been refused? A. Yes.

MR. HARRIS: I have no further questions.

CROSS EXAMINATION

BY MR. EVELETH:

Q. Mrs. Gonzalez, I believe you said to your knowledge or belief, a membership was denied. A. I just recall hearing about it. I am sorry. I can't say, officially.

[298] Q. You don't know why it was denied, or when it was denied? A. No, sir. I am afraid not.

Q. Could it possibly have been because the applicant didn't live in the geographical area specified? A. I am sorry. I just can't recall.

* * *

VIRGINIA MOORE

defendant, was recalled as a witness, and testified further as follows:

DIRECT EXAMINATION

BY MR. HARRIS:

Q. You have already been on the stand. You were the president of Little Hunting Park, Inc.? A. In 1965.

Q. Now, did you receive any telephone calls after the board had expelled or denied membership to Mr. Freeman?
 A. Denied the assignment. Yes, I received one from Mr. Freeman, asking that he meet with the board of directors, be allowed to meet with the board of directors. I said he would have to take that up with Mr. Sullivan. He asked why he had been denied. I said he would have to take that up with Mr. Sullivan. We had nothing to do with him.

[299] Q. Did you hear from Mr. Sullivan? A. I called Mr. Sullivan that day. He was out. He returned my telephone call on June 9th.

Q. Will you tell what transpired in this telephone conversation? A. I told him he should not have Mr. Freeman call me. He should tell Mr. Freeman why he was being denied the assignment. He said, "Father Walsh had recommended the assignment." It made no difference to me what Father Walsh recommended. He wasn't a member of the corporation. He very sarcastically said, "You don't care what Father Walsh said?" I said, no.

Q. What did he say? A. I tried to tell him it was for economic reasons. He repeatedly kept interrupting me, and I said, you are rude and hung up on him.

Q. What did he say before you hung up on him? A. He said, "The action of the board was immoral and illegal."

Q. Did he mention anything else? A. I can't recall anything else.

Q. Now, Mr. Sullivan's letter of June 25, 1965 was mailed to your employer, Father Wingler? A. Right.

Q. Did Father Wingler talk to you about it when he [300] received it? A. He showed me the letter.

Q. Did he have any comment? A. Other than it was none of his business. It was a private corporation.

* * *

Q. Are you familiar with the division of the membership in Little Hunting Park, Inc. according to subdivision?
 A. I did make a study of it while I was a member of the board of directors.

Q. Do you recall making a list of the various numbers of members in each subdivision? A. I do.

Q. And you made notes of the varous numbers? A. There was an estimate, yes.

Q. And you gave it to me? A. I did.

Q. To refresh your memory, are these the notes that you gave to me? A. Yes.

Q. Now, how many houses are there in Bucknell Manor? [301] A. I have been told when we moved into Bucknell Manor that we were the seventh family in there. I have been told. I did not make the actual count.

MR. EVELETH: I object. It is rank hearsay.

BY MR. HARRIS:

Q. Do you know for a fact approximately how many houses are in Bucknell Manor? A. About 800.

Q. How many people in Bucknell Manor belong to Little Hunting Park, Inc.? A. Around 115, that is an estimate. In going through the records, some of the streets I may have missed.

Q. How about Bucknell Heights, how many houses were in Bucknell Heights? A. I don't know.

Q. Do you have an estimate? A. No, I don't.

Q. Do you know how many people in Bucknell Heights were members of Little Hunting Park, Inc.? A. Approximately 136.

Q. Do you know how many members you have in Alexandria City? A. In Alexandria City, there are, I think, about eleven, sixteen on here.

[302] Q. How many do you have that are not in the area specified in the bylaws and Alexandria City? How many are out of those two areas?

MR. EVELETH: I must object. I feel she is reading from that thing. She should use her recollection.

THE COURT: I believe she prepared it.

MR. EVELETH: I object. I don't think he has laid a proper foundation. He hasn't shown where she got that information from.

THE COURT: She made a study.

MR. EVELETH: It doesn't mean anything to me.

THE COURT: You may cross examine on it.

BY MR. HARRIS:

Q. How many outside the area? A. 117.

* * *

[306] Q. Going back to the telephone calls, did you receive any unfriendly telephone calls as a result of this accident and the rejection of the assignment to Mr. Freeman?

A. Yes, I received a number of them. Some of them identified themselves as members of the corporation. However, I don't recall their names. The one name I do recall was Mr. Sutherland. He called and asked if he could be present at a board meeting.

This was in June. I advised him that the board meeting had already been held, and I would see if he could be allowed to attend the July meeting. I think his name did come up, and then Mr. Sullivan called me and was very cool and very put out because he felt that the board meeting was going to be on the regularly scheduled third Tuesday.

However, the meeting had been held the previous [307] to allow members to go on vacation. I felt in his manner that I should have advised him that the meeting was held prior to the third Tuesday, and then Mr. Sutherland called me back and he was very unhappy about the meeting having been held on Thursday. I told him that demands were being made to call a special meeting, whereby this matter would be resolved. He said that wasn't quick enough, and I will take legal means, and said very sarcastically, "I hope you have a good vacation."

Q. Did you talk to Mr. Sullivan again that evening? A. No.

Q. Did you receive any other telephone calls? A. I received many anonymous telephone calls.

Q. What was the tenor of the telephone calls? A. One woman used language I don't approve of. "Woman, stick to your guns," and things like that, that I don't approve of.

Q. How about hostile telephone calls, did anyone make telephone calls that were hostile? A. Yes.

Q. How many of those hostile telephone calls did you receive? A. I would say half a dozen.

* * *

[310] CROSS EXAMINATION

BY MR. EVELETH:

Q. Mr. Sullivan, it is charged, did use abusive language to the corporation's president. This is one of the charges that was a basis for his expulsion. Is that correct? A. Yes, sir.

CROSS EXAMINATION

BY MR. EVELETH:

Q. What was the abusive language he used, and when?

A. When he called me and told me the board of directors were immoral in their decision, and he was—

Q. He called you, Mrs. Moore? A. Yes, he called me.

Q. Was he returning your call? A. Yes.

Q. All right, continue. A. I don't know where I was.

[311] Q. I was asking how he was abusive during that conversation. A. He was abusive in the fact that he asked me a question, would not let me finish my answer, and in the way he replied when I said I did not care whom Father Walsh recommended.

Q. What was the abusive language he used? A. That to me was abusive.

Q. What was the abusive language? A. That was the abusive language, and the way he answered me and being rude and not letting me finish.

Q. What was the abusive language, not his manner or anything like that. A. When he said, "You don't care what Father Walsh said," and accused the board of which I was a member of being evil and immoral.

* * *

[312] Q. Well, you said he caused you to have more extra meetings. Isn't that the job of the board of directors to have meetings? A. Regular meetings, not extra meetings for something like this.

Q. Something like this? What do you mean, something like this? A. I mean to ask to have meetings, and he wouldn't accept the decision of the board of directors.

Q. What was discussed in all of these extra meetings?

A. We discussed whether it was in the bylaws that we had to accept every assignment that was given to us.

* * *

[315]

JEWELL GONZALEZ

was recalled as a witness, and testified further as follows:

THE COURT: He hands you a set of minutes of the corporation, bearing some date.

MR. EVELETH: March 16, 1965.

THE COURT: Marked Exhibits Nos. 53 through 56. Are those true copies of the minutes of the meeting?

DIRECT EXAMINATION

BY MR. EVELETH:

Q. I have what purports to be minutes, dated March 16, 1965, March 15, 1966, May 17, 1966 and October 26, 1965. I ask you if these are true copies of the minutes. A. This one is signed, yes.

THE COURT: The answer is yes. You may step down, all right.
Thereupon

VIRGINIA MOORE

defendant, resumed, and testified further as follows:

MR. EVELETH: I offer these minutes into evidence.

THE COURT: You object?

MR. HARRIS: I have no objection, Your Honor.

THE COURT: All right, let them be admitted.

(The minutes, marked Plaintiffs' Exhibits Nos. 53 thru 56 for identification, were received in evidence.)

[316]

FURTHER CROSS EXAMINATION

BY MR. EVELETH:

Q. I have one final question, and I would like for you to read the final sections of these minutes that I have marked. I hand you Plaintiffs' Exhibit 53, and I ask you to read Section (b) here out loud. A. "Mr. Lennon reported that there are 20 delinquents from 1964. Presently, we have 51 memberships listed for sale with the corporation. It was agreed, however, that the corporation is in better shape

this year than it has been in the past few years. * * *

Q. And the date of that is what? A. March 16, 1965.

Q. Plaintiffs' Exhibit No. 54, dated March 15, 1966.

Will you please read what is in brackets? A. "Mr. Lennon said Mr. O'Boyle has compared our bank account with other pools in the area, and he informs us we are in better shape than most any other pool in the area."

Q. I show you Plaintiffs' Exhibit No. 55, dated 17 May, 1966. Read the material in brackets. A. "Mr. O'Boyle suggested that some thought be given to buying back all eighty memberships that are now outstanding. It is his feeling we are financially in good shape, and in better shape than most all other area pools."

[317] Q. I show you Plaintiffs' Exhibit No. 56, dated 26 October, 1965. Will you read that, please? A. "Mr. Lennon reported that the corporation now has 564 members, with 49 memberships listed for sale. There were 27 assignments this year and 58 transfers. He reported 49 members delinquent with their dues and advised that delinquency letters have been forwarded to them. He reported that conditions have improved concerning the large number of sales that the corporation has been having. Last year we had 75 memberships for sale. This year we have 49. This concluded his report."

* * *

PAUL FORBES

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. State your name and address for the record, please.

[318] A. Paul Scott Forbes, 6910 University Drive, Alexandria, Virginia.

Q. Are you married, Mr. Forbes? A. I am.

Q. Do you have any children? A. Yes.

Q. How many? A. One.

Q. Are you a member of Little Hunting Park, Inc.? A. Yes.

Q. Were you in 1965? A. Yes, I was.

Q. What is your occupation? A. I am a public relations counsel.

Q. What is your higher educational background, Mr. Forbes? A. Graduate from the Foreign Institute of Applied Sciences.

Q. Were you present at the special meeting held on July 29, 1965? A. Yes, I was.

Q. Would you describe what transpired at that meeting and how it was conducted, please? A. Well, it was a very well attended meeting. It seemed the membership was just about everyone. The meeting [319] took place in the cafeteria of Bucknell Elementary School. People were standing on the tables, outside the doors, and outside looking in. The atmosphere was quite charged. It was evident that there was a high level of interest in the proceedings. I noted that entire families had come. There were husbands and wives, and even children were there.

If my memory serves me, I believe I was the first one to offer a motion to the effect that I didn't think it was proper that the Freemans had been excluded from attending. From the very beginning, the response from the people present was extremely emotional. I was shouted down and not given an opportunity to speak and complete my motion.

The impression I got was that the meeting was not at any time wholly under the control of the chair. On several occasions I protested to the chair on the basis of making some parliamentary motion. I appealed to point of personal privilege to ask the chairman to keep people from shouting. My appeals were ignored. At one point, I referred to Roberts Rules of Order, and asked that the meeting be conducted in accordance with generally accepted procedures and the parliamentarian stated he wasn't familiar with Roberts Rules of Order. I happened to have a copy of that pamphlet in my hand and took it up to him. He put it in his hand and laid it down and never referred to it.

[320] During this time I sat next to the plaintiff, Mr. Paul Sullivan, and had an opportunity to observe his actions and conduct very closely. As the controversy and emotion swelled around him and he maintained his dignity and calm, and all the time I don't think I could, as it was all centered around him, I believe he was most discourteously treated by those who supported the action of the board. Whether those were in the majority or not, I could not tell, but they certainly were the most vocal.

Q. Why couldn't you tell? A. As I said, it was a large attendance of men, women and children. Most of the votes, or, I think if my recollection serves me, were voice votes. There was no way of determining who were voting, whether they were members or non-members. Let us take hypothetical figure and say there were 300 bodies present. It is entirely possible that one-third of these were members, and you only had two-thirds of the people that were shouting, but you had no way of telling whether these people were actually members.

The movement was very ugly. Here I am only me, my personal membership. I am a member sitting in the middle of a lynching mob. When I left the meeting, I walked across the street to my home and met two of my neighbors. One said, "What is going on? It sounded like a Nuremberg-Nazi meeting. There was so much shouting going on. This is the [321] impression I got.

Q. Who was the parliamentarian at that meeting? Do you know? A. Hanley.

Q. Was the gentleman in this room today? Do you know? A. I don't know Mr. Hanley. I just seemed to remember the name.

Q. Is there a door? Are you familiar with the physical layout of the cafeteria at the Bucknell School? A. I am.

Q. You live across the street from it? A. Yes, I do.

Q. Is there a back door to that room whereby people could wander in from the playground? A. Yes.

Q. Without anybody's knowing about it? A. Yes, there is, and the door was open. It was quite warm, as I recall

because of the number of people. The door was open and people standing in the door.

Q. And people could wander in from the playground?
A. I don't remember whether they did, but they could have.

Q. Did you observe Mr. Sullivan at other times during the period that this whole controversy was current? That is during the period that Mr. Freeman, the assignment to [322] Mr. Freeman had been rejected, et cetera? A. Yes, sir, I saw him on two or three occasions.

Q. Did you see him at times when he was highly emotional? A. Not outwardly.

Q. Not outwardly? What was his manner? A. Well, I would say that in the short time I have known Mr. Sullivan, I haven't known him except during this controversy. I have found him to be unusual in his control of his emotions. In fact, this is one of the surprising things I have noticed about Mr. Sullivan, and remarked to my wife in many meetings with him, that if I had the provocation and was involved in the situation as he was, I couldn't remain as calm and cool and reasonable as he was. I think he was an extremely calm man under the circumstances.

CROSS EXAMINATION

BY MR. HARRIS:

* * *

[323] Q. Would you say the majority of the people were making noise? A. I would say the atmosphere was a noisy and unruly one. A. They were shouting

Q. They were shouting? A. Down the actions of the board.

Q. Apparently this action was a blow? A. Yes, it was.

Q. Do you think that of the membership, that a majority were for Mr. Sullivan? A. I have no way of knowing what the majority were for. In my view, there was no attempt to segregate or separate the legal voters from the general people who were attending [324] that meeting.

* * *

[325] Q. You consider yourself well versed in Roberts Rules of Order? A. I was past president of the Toastmasters Club.

Q. Did you ask for a show of hands? A. I attempted to. I asked, could we have another vote and a showing of hands?

Q. Who did you ask to show hands? A. The chairman.

Q. Who is the chairman? A. Mrs. Moore.

Q. Is she in the Courtroom? A. Right there. I was told it was out of order because there was a different motion on the floor. Then afterwards when that was voted on by acclamation, then I attempted to stand up and make that point and everybody—Nobody adjourned the meeting. It just exploded. It disappeared and people disappeared.

Q. And the chairman did nothing to regain order? A. No, not at that time.

Q. At any time? A. I won't say that the chairman never did anything to retain order. I don't remember that closely. I won't say on that point. She did not do anything to regain order, but there was a general atmosphere in which order wasn't maintained in most cases.

* * *

[326]

JOHN M. WELLS

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Will state your name and address for the record, please? A. My name is John M. Wells. I live at 1911 Windmill Lane in Fairfax County. My address is Alexandria, Virginia.

Q. What is your occupation? A. I am a Unitarian Minister.

Q. Of what church? A. Of the Mount Vernon Unitarian Church.

Q. Where is your church located in relation to the [327] neighborhood where Little Hunting Park is situated? A. Well, the church is located just off Fort Hunt Road, which is just a few miles from the Little Hunting Park area.

Q. How far? A. A couple of miles as the crow flies. You have to go a little farther around the road to get there.

Q. Are you acquainted with Paul E. Sullivan? A. Yes.

Q. Did you ever receive a copy of a letter sent through the mail to you? Were you ever delivered a copy of a letter from Mr. Sullivan dated June 25, 1965, addressed to a Reverend Cassidy, Director of the Northern Virginia Catholic Charities? A. No.

Q. Was there an occasion in June, 1965 when persons met with you when Mr. Sullivan and others met with you? A. Yes, sometime toward the middle of June, and I think it was about June 13th, but I don't remember that exactly. My memory was refreshed on that, but I don't remember exactly.

Q. Do you recall who was at the meeting? A. I remember who was there. Mr. and Mrs. Sullivan, Reverend Mr. Davis.

THE COURT: What was the date of this meeting?

[328] Q. June 13th, the witness testified to. A. At

this church, yes. Let me say this. My church is a little different from most in that we don't have a building like a church. The church bought an estate, and I live upstairs in what is called the mansion of the estate, and the church is held downstairs in what is called the fireplace room, because there is a fireplace there.

Q. Was the same building where you reside, comparable to the rectory of the church? A. Yes, but the downstairs portion is for church and Sunday School classes and get together. This is where the meeting occurred. There was a Reverend Mr. Davis, who is a Episcopal minister, who was there, and members of my church were there, and Mr. and Mrs. James Sutherland and Mr. and Mrs. Paul Forbes, and if there were any others there, I don't recall. I think that might be the group, but it has been two years ago.

THE COURT: Were the Freemans there?

THE WITNESS: Yes, they were there.

BY MR. BROWN:

Q. What was the conclusion or result of that meeting?

A. There were some rather unusual occurrences. That is, it seemed to me unusual. During the course of the spring, we had in the community where I live, and that includes the Bucknell area and Hollin Hills and several [329] of the members of my church had been actively participating in filling an open house drive to see what the tenor of the community might be in reference to negroes moving in, and people who would be willing to sell their homes. There had been a tremendous amount of cooperation among the people, particularly among the Catholic people and Unitarian, and we found this change to be wonderful.

It was surprising to me to find from my congregation that a negro and his family who had moved into our neighborhood, had not been permitted to become associated with, join, or I don't know what the exact details are at the swimming pool, where the members of my church were members. We got together. I was called and asked, did I know anything about it? I said, no. At that time I hadn't heard about it. I did not know Mr. Sullivan at that time.

I had heard of him. He came and his wife and Dr. and Mrs. Freeman and Reverend Mr. Davis, who I see is a negro Episcopalian Minister and members of my church and me, and the question in our own community, for quite a few of us had worked in a spirit of unanimity and a spirit of good brotherhood, our open community, to find that for some reason or other that we did not know, that Dr. and Mrs. Freeman and their children were not permitted to perform actively in the swimming pool situation.

There are no public swimming pools in our area. [330] They are all community type swimming pools. This meeting was to discuss why this could happen in our community, where we, as church leaders, failed to see how this might be.

I have a very peculiar background. I was an attorney much longer than I have been a minister, and there are differences. I was asked as to what the legal rights of the parties involved were.

THE COURT: Did you tell them?

THE WITNESS: No, I did not. I have been urged by many of my friends to be admitted to the bar in Virginia, which is under the law of Virginia. I would be eligible to be admitted, but I have a very good reason why I have not done this. It is because I don't want to practice law. It would take too much of my time. I want to continue as a Unitarian Minister, and I studiously avoid letting this become a legal get together.

The question came up as to what should be done or should not be done. You asked for the conclusion of this meeting. My work was at that time as a minister, and I guess all my legal training comes through in spite of my efforts not to let it, and that there should not be any legal maneuvering of any kind. This was the nature of the meeting. This was it. Primarily, it was almost unbelievable on the part of myself and on the part of Reverend Davis and [331] Mr. and Mrs. Sutherland and Mr. and Mrs. Forbes, that this could happen. There was discussion about what might be done, and I left shortly thereafter for New Hamp-

shire, and I got back from New Hampshire, and I left for six weeks in Georgia, so that was about the extent of my participation in this.

BY MR. BROWN:

Q. Was it concluded at that meeting that anything should be done by way of conducting a phone campaign to members of the board of directors of Little Hunting Park? A. Not to my knowledge. There were no real conclusions of any kind. Certainly there was no effort made to call or influence anyone. If there was any question of any phone calls of any kind, I don't know anything about it.

Q. You were there for the whole meeting? A. I was there. We could very well leave. I was home for the whole meeting, of course.

* * *

CROSS EXAMINATION

BY MR. HARRIS:

Q. Mr. Wells, are you a member of Little Hunting Park?

A. No, I am not.

Q. Is Father Davis, Reverend Davis, a member of [332] Little Hunting Park? A. I can't answer that. I don't know whether he was or not.

Q. Do you know whether or not the members of your church who were available for this meeting, were members of the Little Hunting Park, Inc.? A. It seems to me that Mr. and Mrs. Sutherland were members, and from what they said there, I believe that Mr. and Mrs. Forbes were members.

Q. You mentioned, "Our neighborhood." You live in Bucknell Manor? A. No, I don't.

Q. Do you live in Beacon Manor or White Oaks? A. No, no.

Q. Or in Bucknell Heights? A. No.

Q. How did you find out about the fact that Mr. Freeman was denied membership? A. I was told originally by Mrs. Forbes, and then subsequently by Mrs. Sutherland and Mr. Sutherland. Mr. Sutherland at that time was chairman of the board of my church.

Q. You said you held this meeting to find out what you, as minister of the community, or how you as minister had failed. Now, where is Reverend Davis' church? [333] A. In Alexandria. I don't know exactly where his church is, I should know, but I don't. He has been in my house. I don't know where his church is. I don't know.

Q. We have a letter dated 25 June to Reverend Cassidy. In this letter Mr. Sullivan gave his impression of this meeting he held with you. Let me read, "Later that same evening, we met with the Freemans, some interested members and Mr. John Wells, a minister of the Mount Vernon Unitarian Church. We invited Father Walsh but because of the bishop's presence in the area, he declined to attend. In the discussion, we came to the conclusion there were many avenues of action. Until they were all exhausted, we should pursue the matter." Do you disagree with this conclusion of Mr. Sullivan so far as the result of this meeting? A. Well, when he says in that letter that there were a number of avenues open, there is always a feeling generated at a meeting of hope, and we will move along to it.

Q. I think your testimony was to the effect that you suggested that they proceeded through the organization provided by the club. Did you not? A. Well, normally, you see, before you would proceed any other way, you would proceed that way.

* * *

[337] Certificate:

This volume of the transcript was tendered to me June 12, 1967. In the morning mail on that date I received a copy of a letter from Plaintiffs' Counsel, Robert M. Alexander, addressed to Defendants' Counsel, John Charles Harris, dated June 9, 1967, advising Mr. Harris that the transcript was being delivered to me, Judge Keith on the same day. The transcript was left at my office with my secretary on June 9, 1967. I received it June 12 1967, at 9 A.M.
Signed by me June 20, 1967.

/s/ James Keith
Trial Judge

[Plaintiffs' Exhibit No. 3]

Lease-Virginia

THIS DEED OF LEASE

Made this frist day of February in the year 1965, between Paul E. Sullivan of the one part, and T. R. Freeman of the other part,

Witnesseth, That the said party of the first part does demise unto the said party of the second part personal representatives and assigns the dwelling located at 970 Quander Road, Bucknell Manor, Alexandria 6, Virginia 22306, and the Little Hunting Park, Inc. pool share No. 290 from the first day of February, 1965, for the term of one year from thence next ensuing; and to expire on the first day of February, 1966, yielding therefor during the said term the rent of \$1,548.00 Dollars, payable as follows, to wit: twelve monthly installments of \$129.00 the first installment to become due on the first day of February next.

The said Lessor covenant for the Lessee quiet enjoyment of 1-year term, and that if the said building shall be destroyed or so injured by fire as to render premise untenable, this lease shall be determined null and void.

The said Lessee covenants to pay the rent in the manner above stated; that he will not assign without leave; that he will leave the premises in good repair; that the premises shall not be used during the said term for any other purpose or purposes than those above specified; that all gas and electric bills which shall be unpaid at the termination of the tenancy shall be regarded as so much rent due to the lessor and be recoverable by all the remedies to which he may be entitled for the recovery of the rent hereinbefore reserved; that at the expiration of the said term, to wit, on the first day of February, 1966, without any notice requiring him so to do, he will deliver to the Lessor, his agents or assigns, quiet and peaceful possession of the said premises. The Lessee acknowledges the receipt of two keys and agrees to return the same, and to replace all glass broken out during

his tenancy at the expiration of this lease. Any damages caused by the bursting of water pipes, from failure to turn off the water in cold weather, or from the stoppage of water closets, shall be repaired at the expense of the Lessee and the Lessee covenant that the Lessor may re-enter for default of thirty days in the payment of any installment of rent, or for the breach of any covenant herein contained. The Lessor acknowledges receipt of \$64.00 as a deposit, which will be returned to the lessee upon receipt of the premises in good repair.

Witness the following signatures and seals:

/s/ Paul E. Sullivan [Seal]

/s/ T. R. Freeman, Jr. [Seal]

bind as security for the fulfillment on part of the Lessee of all the obligations and covenants entered into by as above, and hereby waive homestead exemption as to this obligation.

WITNESS hand and seal, this day of
19 .

[Seal]

[Plaintiffs' Exhibit No. 7]

Little Hunting Park, Inc.
Alexandria, Virginia

24 May 1965

ADDRESS REPLY, IF ANY, TO:

2616 Woodlawn Lane
Alexandria, Virginia

Dear Member:

At the regular meeting of the Board of Directors of Little Hunting Park, Inc., held May 18, 1966, the assignment of your pool membership to Mr. T. R. Freeman, Jr., was not

approved. We are, therefore, enclosing the Corporation's check in the amount of \$37.00, made out to Mr. Freeman, whom we assume paid the assessment.

Very truly yours,

LITTLE HUNTING PARK, INC.

/s/ S. L. Lennon
Membership Chairman

[Enclosure \$37.00 SLL/jg]

[Plaintiffs' Exhibit No. 8]

Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia 22306

May 25, 1965

Mr. S. L. Lennon
Membership Chairman
Little Hunting Park, Inc.
2616 Woodlawn Lane
Alexandria, Virginia

Dear Mr. Lennon:

Enclosed you will find the check you sent me made out to my tenant, Dr. Freeman. Your assumption that he paid the assessment is incorrect. I hold two pool shares, one which my family uses and the other for the use of my tenant. When the association several years ago adopted a policy of restricting the assignment of shares to tenants, there seemed to be no point in collecting separately for the assessment and I have not done it since, but merely charge it as an expense against the property. In any case, since the assessment is due and payable, and I have paid it, it would be incorrect for you to return it to Dr. Freeman.

As to the separate matter of the Board's disapproval of the assignment, I am perplexed. On the one hand I can assign the share only to my tenant, but on the other, the

Board disapproves the assignment without giving any reason. Since the Board's action, if allowed to stand, would put me in default on my contract with my tenant, I request that it be reversed promptly, or that I be given an adequate explanation for the disapproval of the assignment.

I should state that, although I have known Dr. Freeman only since his arrival in Washington toward the end of January this year, I have developed a high regard for him and his family. I know of nothing that would make them less desirable than our previous tenants as members of Little Hunting Park, and I fail completely to understand the Board's action. Since the pool is due to open in just a few days I'm sure that you will give this matter prompt consideration.

Yours truly,
Paul E. Sullivan

cc: All Board members.

[Plaintiffs' Exhibit No. 9]

HARRIS, ROARK AND GLYNN
601 Belle View Boulevard
Alexandria, Virginia

July 30, 1965

Mr. Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia

Dear Mr. Sullivan:

I am enclosing a statement of facts alleged by the Board of Directors of Little Hunting Park, Inc. to constitute conduct

on your part inimical to the corporation's members. I am sending a copy of same to Mr. Gartlan.

Sincerely,

/s/ John Chas. Harris

cc: Joseph V Gartlan, Esquire
Washington, D.C.

Encl. (1)

JCH/plf

[Plaintiffs' Exhibit 9—continued]

To: Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia

Pursuant to the stipulations filed in the matter of Paul E. Sullivan v. Little Hunting Park, Inc. now pending in the Circuit Court of Fairfax County, Virginia the following is a statement of the facts, alleged by the Board of Directors of Little Hunting Park, Inc., to constitute "conduct inimicable to the Corporation's members" as provided by Article III, Section 6 of the By-Laws of Little Hunting Park, Inc.

1. That you did repeatedly falsely accuse the Board of Directors of practicing bigotry and hatred and you did cast doubt on the veracity of the board members. This accusation was made to members of the board, members of the corporation and others.
2. That you did instigate and conduct and cause others to instigate and conduct a harrassment of the President and board members by numerous unfriendly telephone calls to the President and board members indicating in such calls that the board members were guilty of hatred and bigotry.
3. That on the 28th day of May, 1965, when, in response to your letter of May 25, 1965, three members of the corporation visited your home to discuss your letter with you,

your conduct was insulting and rude, making such statements as you "were ashamed of them" and the Board's action was "evil, immoral and shocking."

4. That you did, on the telephone, use abusive language to the Corporaton's president.

5. That you did on the 25th day of June, 1965 cause to be mailed to the clergymen of members of Board of Directors a letter, the gist of which was that the board members were lacking in Christianity and participating in a "real moral evil."

6. That a copy of the aforesaid letter of June 25, 1965 was mailed to the clerygman, employer of the corporation's president.

7. That this same letter of June 25, 1965 did impugn the moral leadership of a local clergyman creating a strained relationship between the corporation and that clergyman.

8. That you, in circulating a request for a special meeting of the membership of the corporation did use violent and abusive language to members of the corporation who refused to sign said request.

9. That on the 1st day of July, 1965 you did write to Rev. Thomas J. Cassidy of Catholic Charities of Northern Virginia accusing the members of the Board of Directors of "sin."

10. That you continued to harrass them and cause them to utilize time that should have been used for corporate matters to consider irrelevant matters presented by you.

11. Your actions have caused unnecessary financial loss to the officers, board members and the corporation. Your actions have caused, to use your own words with a change of tense, "bitterness among people who had many ties of charity."

LITTLE HUNTING PARK, INC.

By: /s/ John Chas. Harris

[Plaintiffs' Exhibit No. 10]

August 3, 1965

John Charles Harris, Esquire
601 Belle View Boulevard
Alexandria, Virginia

Dear Jack:

This will serve to confirm the details of our conversation on the afternoon of August 2, 1965, concerning the "statement of facts" forwarded by letter under date of July 30, 1965, to Mr. Sullivan, with a copy to me, which is alleged by the Board of Directors to constitute the conduct which is the alleged basis of the proposed expulsion of Mr. Sullivan. I stated to you in that conversation that I found the "statement" to be inadequate in a number of respects and that, as furnished, it did not comply with the terms of the Stipulation entered into before the Circuit Court of Fairfax County on Friday, July 16, 1965.

It is my understanding that you will commence on August 3 to procure additional specific information with which to supplement the statement, on the basis of notes taken by you in our conversation. This letter will serve to confirm my objections to the statement and my itemization of its inadequacies. I am referring in correspondingly numbered paragraphs to the paragraphs of the statement.

1. This paragraph omits to mention the names of the persons to whom the accusations were allegedly made and the dates and places thereof. You informed me that no specific record has been kept of the dates and places but you agreed that you would attempt to procure the names of the persons to whom Mr. Sullivan allegedly made the accusations referred to.

2. You agreed that you would attempt to furnish me with the names of the persons making the telephone calls referred to. At this point you could only recall that a Mr. Sutherland was named as one of the callers. I also informed you of my position that Mr. Sullivan can hardly be held

responsible for specific words used by any of the alleged callers.

3. While it is denied that Mr. Sullivan's conduct was at any time insulting and rude, paragraph 3 does not indicate that the matters referred to therein adversely affected the corporation's members.

4. It is requested that the language which the corporation's President considers to be abusive be specified. It is also our position that this matter does not amount to conduct inimicable to the corporation's members.

5, 6 and 7. As to these three paragraphs, I suggested that the Board consider whether it wishes to make an issue of Mr. Sullivan's correspondence with Fathers Cassidy, Wingler and Walsh since this will inevitably involve these three priests in the litigation which will ensue if Mr. Sullivan is expelled. I cannot see how these letters have affected the corporation or its members and feel that they are totally irrelevant as far as the standards, however vague they are, by which a member can be expelled. I also pointed out that Mr. Sullivan was totally unaware of Mrs. Moore's employment by Father Wingler when he corresponded with Father Wingler. As to item 7, you agreed to specify the relationship between Father Walsh and the corporation and the manner in which any such relationship was alleged to have been "strained".

8. You agreed to furnish me the names of the members of the corporation to whom Mr. Sullivan allegedly used "violent and abusive language" upon their refusal to sign his petition for the membership meeting. At this time you were able to give me only the name of Mrs. Aileen Winters.

9. The comments made above with respect to paragraphs 5, 6 and 7 apply here.

10. This paragraph is totally inadequate and I request that you specify how and when the alleged harassment took place.

11. You agreed to itemize the alleged "unnecessary financial loss" which has been suffered by the officers, Board members and the corporation. I advised you of my position that losses to the corporation could be the only relevant matter here.

As I am sure you will understand, I must have this information soon enough to complete my preparations for the hearing on August 17. If I do not promptly receive an adequate amplification in compliance with the terms of the Stipulation I will move the court to enforce the Stipulation and to enjoin the holding of any expulsion hearing until it is complied with.

Sincerely,

Joseph V. Gartlan, Jr.

bcc: Mr. Paul E. Sullivan
JVG/jap

[Plaintiffs' Exhibit No. 11]

HARRIS, ROARK AND GLYNN
601 Belle View Boulevard
Alexandria, Virginia
August 9, 1965

Joseph V. Gartlan, Jr., Esquire
Melrod, Redman & Gartlan
815 Connecticut Avenue, N.W.
Washington, D.C.

Dear Joe,

In response to your letter of August 3, 1965, I have consulted with Mrs. Moore and have determined the following answers to your questions. All numbered paragraphs will correspond to the numbered paragraphs contained in my statement of particulars.

1. The accusations were made to board members Oskar W. Egger, S. L. Lennon; to member John Handley; to non-members Rev. Thomas J. Cassidy, Rev. John J. Mahen, Rev. Joseph Wingler and Mr. John Wells. The statements concerning the board's veracity were made to Messrs. Egger, Lennon and Handley. All statements made to Messrs. Egger, Lennon and Handley were made verbally on May 28, 1965 at Mr. Sullivan's residence and the statement made to the clergy was made by letter dated June 25, 1965.
2. All of the telephone calls were anonymous with the exception of one who identified himself as Mr. Sutherland. These calls were received immediately after the board's notification to Mr. Sullivan of its action on the Freeman application and no other person was notified of such action. The board members saw no necessity, at the time, of recording the date or time of such calls.
3. Since your letter merely comments on this point, I presume that there is no additional information required of me.
4. Prior to using the word "abusive" in the statement of facts, I consulted Webster's dictionary for a definition of "abuse". Webster defines abuse as "improper treatment or use, misuse". Mrs. Moore cannot recall the exact words used in the conversation, but the manner in which he spoke to her was improper. His call was to request the board to meet Mr. Freeman, which request Mrs. Moore declined. Mr. Sullivan again accused the board of immoral conduct and Mrs. Moore terminated the conversation.
- 5, 6, & 7. It is not the wish of the board of directors to involve the clergymen in this dispute or any future litigation. However, the letters were written by Mr. Sullivan and they did reflect unfavorably on the corporation. Even if Mr. Sullivan did not know of Mrs. Moore's employment by Father Wingler, I am sure you will agree that he would bear the responsibility of a detrimental effect of such a letter. The corporation has always tried to maintain a friendly and cordial relationship with the clergy in the

area and the strained relationship between Father Walsh and the corporation is presumed by the board because of Mr. Sullivan's letters.

8. At this time, some members of the board are on vacation and another is in the hospital, therefore, the only name I can furnish to you is that of Mrs. Winters.

9. My comments are the same as contained in 5, 6, & 7.

10. Since time is short and members of the board are not available for me to question them on this item, we will withdraw this item as one of the allegations of misconduct by Mr. Sullivan.

11. In view of Mr. Sullivan's statement that the matter "will undoubtedly escalate to legal action" the board went to the expense of retaining counsel. The officers and board members were required to hold additional meetings to discuss this threat of a law suit and the other matters raised by Mr. Sullivan and the attendance at such meetings caused such officers and directors additional and unnecessary transportation expense.

As I informed you in the court house corridor, I am willing to give you any specifics on the allegation of the board of directors. If there is any further information that you need, I will supply same.

I have informed the board that although their original action of June 9, 1965 concerning Mr. Sullivan's membership was based on his conduct prior to that date, they may also consider his conduct subsequent to that date.

Sincerely,

/s/ John Chas. Harris

JCH/plf

[Plaintiffs' Exhibit No. 12]

Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia

June 5, 1965

Members,
Board of Directors,
Little Hunting Park, Inc.
Alexandria, Virginia

Dear Board Members:

With reference to my letter of May 25, 1965, on Friday, May 28, I received a visit from Mr. Lennon and Mr. Egger, members of the Board, and a Mr. Handley, who was later described by Mr. Lennon as a shareholder in the corporation who has served on the Board in the past. Since it was implied that I might not receive a written reply to my letter, I have prepared a memorandum which contains what I consider the essential points of the communication made to me during that visit. I am enclosing a copy of that memorandum so that if it contains any untrue statement or omits an essential part of the communication which was made to me, you may correct it immediately and let me know.

I find the explanation for the disapproval of the assignment of the share to Dr. Freeman inadequate and it is unacceptable to me.

Sincerely,

Paul E. Sullivan

Enc.: Memorandum dated June 5, 1965.

MEMORANDUM FOR THE RECORD

Subject: Communication from the Board of Directors, Little Hunting Park, Inc. in Response to my Letter of 25 May 1965.

On May 28, 1965, at approximately 8:00 P.M., Messrs. Lennon and Egger, members of the Board of Directors, Little Hunting Park, Inc., accompanied by a Mr. Handley, who was described by Mr. Lennon as a shareholder of the same corporation, visited me and my wife in our home. The object of the visit as stated by Mr. Lennon in a telephone conversation the previous evening was to discuss my letter of May 25, 1965, in which I requested that the Board of Directors' action in disapproving the assignment of one of my shares in the corporation to Dr. T. R. Freeman, a tenant in a house I own at 6810 Quander Road, Alexandria, Virginia, either be reversed or that an adequate explanation of the action be given me. On this occasion the essential elements of the communication that was made to me were as follows:

The Board of Directors acted unanimously in disapproving the assignment of my share to Dr. Freeman, and the action of the Board would not be reversed.

The action was taken because Dr. Freeman is a Negro and no other fact about him was taken into consideration.

In response to my question as to whether a Negro guest of mine might be refused admittance to the pool if I invited him, I was told he might.

In response to my question as to whether similar treatment might be accorded a guest who is Mexican, Puerto Rican, Japanese, Chinese, or Filipino, I was given no assurance that it would not.

/s/ Paul E. Sullivan

June 5, 1965

[Plaintiffs' Exhibit No. 13]

LITTLE HUNTING PARK, INC.
Alexandria, Virginia

Address Reply, if any, to:
6417 Olmi Landrith Drive
Alexandria, Virginia

7 July 1965

Mr. Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia

Dear Mr. Sullivan:

At the June meeting of the Board of Directors, your non-acceptance of the Board's decision on the assignment of your membership to your tenant on Quander Road, along with the continued harrassment of the board members, etc., was discussed at length.

A motion was made and passed unanimously by the seven members of the board present, that since there appears to be due cause for your expulsion from the Corporation in accordance with Article III, Section 6b, i.e., "conduct inimicable to the Corporation members", a hearing will be granted you at the July meeting which will be held at 9:00 PM on Tuesday, 20 July, at the LHP, Inc., pool area. At this time you will be given an opportunity to be heard, after which the board will take final action.

Very truly yours,

LITTLE HUNTING PARK, INC.

/s/ Virginia Moore
President

VM/jg

[Plaintiffs' Exhibit No. 14]

Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia

June 12, 1965

Board of Directors,
Little Hunting Park, Inc.
c/o Secretary of the Board
309 East Side Drive
Alexandria, Virginia

Dear Sirs:

Enclosed is a photostatic copy of the memorandum I have prepared to record the communication of the Board in response to my letter of 25 May 1965 sent to Mr. Lennon, the membership chairman. My purpose in presenting this memorandum to the Board is so that you may inform me if I have misunderstood the communication or if I have omitted any essential part of that communication. Since all members of the Board were mailed copies of the memorandum nearly a week ago, I feel it would be reasonable to expect the Board to take up this letter and memorandum at its meeting on Tuesday, June 15. Since I have arranged with the secretary of the Board to begin examining the records of Little Hunting Park, Inc., on June 16, I am sure she could hand me the reply, if any, to this letter then. I shall regard the lack of a reply as indicating that the Board agrees that the contents of my memo are substantially correct.

As I stated in my letter to the individual Board members, I find the explanation of the Board's action inadequate and I do not accept it. If it is determined that racial discrimination is actually being practiced by Little Hunting Park, Inc., I shall have to consider what implications membership in the corporation may have for my professional career. As you are no doubt aware, the Federal Government, my employer, has a most positive policy of non-discrimination.

I support that policy wholeheartedly and I cannot permit the sincerity of that support to be put in doubt.

Sincerely,

/s/ Paul E. Sullivan

Enc.: Photostatic copy of Memorandum dated June 5, 1965.

[Plaintiffs' Exhibit No. 15]

LITTLE HUNTING PARK, INC.
Alexandria, Virginia

12 June 1965

Address Reply, if any, to:
6417 Olmi Landrith Drive
Alexandria, Virginia

Dear Mr. Sullivan:

Your letter of June 5 has been received. The facts contained therein are only partially correct and do not reflect the entire conversation that was entered into.

The facts are as follows:

The Board of Directors operating in accordance with Article 6, Section 2 of the By-Laws, is concerned with the overall investment and financial operations of the Corporation and accordingly, by unanimous action, disapproved the assignment for one season of your membership to your tenant. We believe this action to be in the best interest of all the members.

You may inform your tenant that since he is not a member of Little Hunting Park, Inc., he is not entitled to any information regarding any actions of the Board of Directors of LHP, Inc.

Sincerely,

LITTLE HUNTING PARK, INC.

/s/ Virginia Moore
President

VM/jg

[Plaintiffs' Exhibit No. 16]

Paul E. Sullivan
7113 Coventry Road
Alexandria, Virginia

June 25, 1965

Rev. Thomas J. Cassidy
Director, Catholic Charities
of Northern Virginia
4049 21st St., North
Arlington, Virginia.

Dear Father Cassidy:

I am involved in a situation in which injustice is being practiced by some Catholics against another because of his race, and other Catholics, including our own pastor, appear to contemplate this situation with equanimity or even approval. I would not be so rash as to presume to judge or attempt to measure the Christianity of these people whose virtues in other aspects of their lives I am familiar with, but I must make the practical judgment that unless positive moral leadership is provided, there will be no improvement in the situation.

I shall try to keep the details of the story as brief as possible. My wife and I own another house in St. Louis Parish which we rent out, and, with the house, a share in the local swimming pool for the use of our tenants. This past winter the house became vacant and we rented it to Dr. T. R. Freeman, Jr., an employee of the U.S. Department of Agriculture, and a Catholic. He and his wife are Negroes. They have two small boys. There was nothing particularly notable about their reception by the neighbors.

When we paid the pool assessment and assigned the share to the Freemans, we received a letter from the Board of Directors saying that the assignment was not approved and with it a check for the Freemans for the amount of the assessment. Since a member of the Board, a fellow parishioner, lives across the street, I went over to see him to find

out what the reason was. From his expressed lack of knowledge I assumed he had not been present when the Board acted. He had.

I then wrote to the Board requesting that they reverse their action or give an adequate explanation for it. A few days later, I was visited by two Board members, one of them another fellow parishioner, together with a shareholder who lives some distance from here. They said that the Board had acted unanimously and would not reverse its action, that they took the action because Dr. Freeman is a Negro, and that they had considered nothing else about him but his race. When I said that was immoral, my fellow parishioner said it had nothing to do with morals, only economics, and real estate values. I told them I would take it up with the membership.

Since they indicated that my letter probably would not be answered, I made a memorandum of the conversation and sent copies to all Board members offering them the opportunity to suggest corrections or additions to it. In return I received a letter which offered no specific changes and simply asserted the Board's right to act on assignments, a right, incidentally, which they had not even gone through the form of exercising for many years previously.

After the visit of the Board's delegation, Dr. Freeman and I visited our Pastor, Father Eugene P. Walsh, at St. Louis' rectory. He suggested that since none of the people had met him, it might serve some good end if Dr. Freeman himself were to approach the Board. Dr. Freeman did request an interview and none was ever granted. At about this time my wife and I attended the Interracial Council dinner where Bishop Russell spoke so much to the point of our problem that we were much heartened, particularly since our Pastor was present to hear the Bishop also. Later that same evening we met with the Freemans, some other interested pool members Dr. Davis, a Negro Pastor of Meade Memorial Church in Alexandria, who lives near us, and Mr. John Wells, the Minister of Mt. Vernon Unitarian Church.

We invited Father Walsh to attend, but because of the Bishop's presence in the area he declined. In our discussion we came to the conclusion that there were many avenues of action open to us in this matter and until they were all exhausted we should pursue the matter.

The by-laws of the pool corporation provide that twenty members can request a special meeting of the corporation, and I am in the process of getting signatures now. The process is educational. A Unitarian from North Carolina is willing to sign but a Catholic from Philadelphia is not. An Episcopalian lady from Petersburg beams as her Methodist husband from North Carolina signs. A Catholic from Washington, D.C., will not sign and gives a lurid description of the shotgun and Bowie knife approach to race relations that he favors. A Catholic from the Southwest, whose own racial background would make him the victim of racial discrimination in his own area, is actively preaching a gospel of panic. An agnostic from Massachusetts signs with the approval of his Catholic wife. A man from Appomattox will sign as soon as his dues are paid. And so it goes.

The main reason I feel it necessary to ask for help from outside the parishes involved (some St. Mary's parishioners are also on the Board) is that my own Pastor is doing nothing effective, if he is doing anything at all, to remedy this situation. It happened that he was present in the living room when I visited a fellow parishioner to ask her to sign the request for a meeting. (The request merely calls for a meeting to meet the Freemans, hear what they have to say, and then vote on whether to direct the board to approve the assignment.) She refused to sign alleging that her home which represents most of her life savings would loss value, and so forth. I tried to reason with her but to no avail. Our Pastor offered not so much as a comment. Under the circumstances, even if he had argued against me I would have felt he was mistaken but sincere. To see him sit in passive cooperation with what our Bishop has identified as a real moral evil is a scandal to me. I request that you take whatever action may seem wise to alleviate this situation,

whether in concert only with the Catholic pastors involved or on a broader scale with our non-Catholic brethren. If nothing is done, this whole matter will undoubtedly escalate to legal action and cause bitterness among people who now have many ties of charity.

Although I am not sure of the affiliation of each Board member, some belong to St. Louis parish and some to St. Mary's in Alexandria. Some may have changed parishes in the recent realignment. In any case I am sure each good pastor knows his own and can tell you who they are, so I am enclosing the list of their names and addresses. If you wish to read the correspondence concerning this matter, I can bring it to your office or have my wife prepare copies for you.

Anything you can do to restore neighborly charity in this matter will be appreciated.

Sincerely,

Paul E. Sullivan

Enc. List of Board members.

cc: Very Rev. Eugene P. Walsh, V.F.
Pastor, St. Louis Catholic Church
Alexandria, Virginia
Rev. Joseph L. Wingler
Pastor, St. Mary's Catholic Church
310 Duke Street
Alexandria, Va.
Rev. John J. McMahon
Regional Director, Catholic Charities
811 Cathedral Place
Richmond, Virginia.

LITTLE HUNTING PARK, INC.
BOARD OF DIRECTORS
1965

President

Mrs. Virginia Moore
6417 Olmi-Landrith Drive
Alex., Va. SO 5-5229

Vice-President and Membership Director

Mr. Leroy Lennon
2616 Woodlawn Drive
Alex., Va. 765-7270

Treasurer

Mr. John F. O'Boyle
1137 Canterbury Lane
Alex., Va. SO-5-9041

Secretary

Mrs. Jewell Gonzalez
309 East Side Drive
Alex., Va. SO-8-2405

Pool Operations Director

Mr. Andrew Gutow
1118 Canterbury Lane
Alex., Va. SO-5-2341

Tennis Courts Directors

Mr. Ronald Arnette
1126 Canterbury Lane
Alex., Va. SO-8-8425

Mr. Oskar Egger
1018 Stanford Drive
Alex., Va. SO-5-4405

Special Activities Director

Mrs. Marjorie Madsen
908 Cygnet Drive
Alex., Va. SO-5-4541

"SPLASH" and Membership Relations Director

Mr. Raymond R. Riesgo

2510 Coventry Road

Alex., Va.

SO-5-3823

Park Administration Director

Mr. Milton Johnson

414 Bluebill Lane

Alex., Va.

765-4043

Special Projects Director

Mr. William J. Donohoe

1071 Quander Road

Alex., Va.

SO-5-4456

Swim Team Representative

Mr. John Tracy

950 Swarthmore Drive

Alex., Va.

SO-5-3806

[Plaintiffs' Exhibit No. 19]

July 9, 1965

Mrs. Virginia Moore, President

Little Hunting Park, Inc.

6417 Olmi Landrith Drive

Alexandria, Virginia

Dear Mrs. Moore:

I have been retained by Mr. Paul E. Sullivan, to represent him in connection with the matters referred to in your letter to him of July 7, 1965.

In that letter, you advised Mr. Sullivan that a hearing would be granted him on Tuesday, July 20, 1965, at 9 p.m. prior to the taking of final action by the Board of Directors of Little Hunting Park, Inc. with respect to Mr. Sullivan's expulsion as a member of the Corporation.

Because of previous commitments which cannot now be broken or changed, I will be away on vacation on July 20,

1965, and will be unable to appear for the proposed hearing. It is the purpose of this letter, among other things, to request that the hearing be postponed to some date convenient to the Board of Directors after August 1, 1965, which will be my first day back in the office after vacation.

I have had an opportunity to examine the Revised By-Laws of Little Hunting Park, Inc. dated April 18, 1961, and in particular Article III, Section 6b thereof which is stated to be the basis for the action taken by the Board with respect to Mr. Sullivan at its June meeting. Section 6a refers to the hearing which your letter has proposed but does little to describe the scope, nature or procedure to be followed at such a hearing. If these provisions of Section 6 have any validity at all, I am sure that you and the other Board members would deem it proper that they be interpreted from the point of view of affording reasonable fairness to Corporation members and to the Corporation in any situation contemplated thereby. A hearing looking to possible expulsion of a member can hardly be said to be fair unless the member is adequately apprised of the facts upon which his expulsion is sought.

It is therefore requested that the Board of Directors furnish to me, as Mr. Sullivan's counsel, a detailed statement of the conduct by him which is alleged to have been "inimicable to the Corporation members," including the dates and places at which such conduct is alleged to have occurred and the names and addresses of persons who allege that such conduct on Mr. Sullivan's part has occurred.

Perhaps, in the interest of an orderly procedure, it might be helpful for me to meet with the Board of Directors or with counsel for the Corporation, if such there be, in advance of the hearing date in order to discuss these details of the matter at greater length. I would be pleased to do so at any mutually convenient time and place.

Please be advised that in my opinion any attempt to bar Mr. Sullivan or members of his family from the privileges of membership in Little Hunting Park, Inc. as a result of a

"hearing" without the observance of at least the aforesaid standards of fairness would be an illegal and improper act by the Board. The Corporation is hereby notified that unless I am advised no later than 5 p.m. Monday, July 12, of a new time and date for the hearing as above requested and that the detailed statement requested above will be furnished me a reasonable time prior thereto, I will apply to the Circuit Court of Fairfax County on Tuesday, July 13, 1965, or as soon thereafter as I may be heard by the Court for an Order enjoining and restraining the Board of Directors and the officers and employees of the Corporation from hindering Mr. Sullivan and his family in any way from the full exercise of their rights as members of the Corporation.

Please let me hear from you as requested.

Very truly yours,

Joseph V. Gartlan, Jr.

cc: Paul E. Sullivan
JVG:ba

[Plaintiffs' Exhibit No. 20]

LITTLE HUNTING PARK, INC.
Alexandria, Virginia

27 August 1965

Address Reply, if any, To:
P. O. Box 4142

Mr. Paul Sullivan
7113 Coventry Road
Alexandria, Virginia

Dear Mr. Sullivan:

At a meeting of the Board of Directors of Little Hunting Park, Inc., August 24th, following the hearing granted you, a motion was made, seconded and carried by the required number of votes in accordance with Article III, Section 6

of the By-Laws of the Corporation, for your expulsion from Little Hunting Park, Inc., effective upon receipt of this letter.

Enclosed you will find a check in the amount of \$399.34 which covers the sale price of your membership, your associate membership, current dues on your associate membership and prorated dues on your regular membership.

Very truly yours,

LITTLE HUNTING PARK, INC.

/s/ Virginia Moore
President

Enclosed

Check for \$399.34

[Plaintiffs' Exhibit No. 21]

July 14, 1965

The Board of Directors,
Little Hunting Park, Inc.
c/o the Secretary
309 East Side Drive
Alexandria, Virginia

Dear Sirs:

The undersigned, members of Little Hunting Park, Inc., hereby request that the Board of Directors call a special meeting of the membership of the corporation within fifteen days of the receipt of this request in accordance with Article IV, Section 2 of the By-laws. The purpose of this special meeting shall be:

1. To have the members of Little Hunting Park, Inc., meet Dr. and Mrs. T. R. Freeman, Jr.
2. To permit the members to listen to brief remarks by Dr. Freeman.
3. To have the members discuss and vote on the following resolution:

"Be it resolved, that, the current assessment having been duly paid, and an assignment of his share having been made in the prescribed form by Mr. Paul E. Sullivan as landlord to Dr. T. R. Freeman, Jr. as his tenant, the Board of Directors is directed to approve that assignment."

Signatures of members of Little Hunting Park, Inc., who have requested a special meeting of the membership of the corporation on July 14, 1965:

Paul Scott Forbes	Paul E. Sullivan
John L. Hammett	Grady C. Frank
James Thomson	(Davis S. Tarr, Committee of the (estate of Allan L. Tarr
Gene V. Tonolli	James F. Southerland
John J. Gallagher	Herbert F. Freeman
Harold M. Cleland	Maurice H. Hellner
Anthony Dold	Richard E. Ruble
Lloyd L. Rutledge (by Lorene F. Rutledge)	Walter J. Levine
Gertrude W. Kerr	Earl D. Proffit
Edward Prince	William Graubard
M. L. Anderson	

[Plaintiffs' Exhibits 28 and 29, being foldout pages, are bound for convenience at the end of this volume]

[Plaintiff's Exhibit 42]

LITTLE HUNTING PARK, INC.

July 21, 1965

IMPORTANT!

SPECIAL BULLETIN

TO: ALL MEMBERS OF LITTLE HUNTING PARK, INC.

FROM: THE BOARD OF DIRECTORS

Subject: NOTICE OF SPECIAL MEMBERSHIP MEETING

In compliance with the By-Laws of our Corporation for calling a Special Meeting, a member, Mr. Paul J. Sullivan, has obtained the signatures of 20 members calling for such a meeting. THIS MEETING IS CALLED FOR THURSDAY, JULY 29TH AT 8:30 P.M. AT THE BUCKNELL ELEMENTARY SCHOOL (adjacent to Little Hunting Park swimming pool).

The purpose of this meeting is to permit the entire membership to vote on whether or not your Board's unanimous disapproval of an assignment of an associate membership to a tenant should be upheld or reversed.

The Board took this action in complete compliance with the By-Laws of the Corporation which vests them with the authority to approve or disapprove all memberships and assignments.

As provided in Article IV, Sec. 4, members in good standing and not suspended, shall be entitled to vote in the affairs of the Corporation as such are brought before a duly held meeting. There shall be not more than one (1) vote per family unit.

Further, as provided in Article III, Sec. 4, irrespective of the type or number of memberships held by one person, no member shall have more than one vote in the affairs of the Corporation.

The Agenda for this meeting as set forth by the petitioners is:

1. Should the membership meet Mr. and Mrs. T. R. Freeman?
2. Should the membership listen to brief remarks by Mr. T. R. Freeman?
3. Should the Board's unanimous action in disapproving the assignment of the associate membership to Mr. T. R. Freeman be reversed?

The membership will have the opportunity to vote on each of the points on the Agenda.

Sincerely,

LITTLE HUNTING PARK, INC.

/s/ (Mrs.) Virginia Moore
President

VIRGINIA

[1]

IN THE CIRCUIT COURT OF
FAIRFAX COUNTYTHEODORE R. FREEMAN, JR.,
et al,

Plaintiffs,

vs.

In Chancery No. 22752

LITTLE HUNTING PARK, INC.,
et al,

Defendants.

Fairfax, Virginia

Wednesday, April 12, 1967

[2] MR. HARRIS: Your Honor, before in the case of Paul E. Sullivan v. Little Hunting Park, Inc., Chancery No. 22751, it contained a prayer similar to the prayer in this case here, and I believe it is stipulated by counsel that the transcript of that trial and all the exhibits that are relevant to this particular case, be incorporated into this record and counsel for the plaintiffs are securing a copy of the transcript and will place it in the record at a subsequent date. Is that correct?

MR. BROWN: That is correct.

* * *

[6] THEODORE R. FREEMAN, JR.

plaintiff, was called as a witness in his own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q. Dr. Freeman, would you please state your name and address? A. Theodore R. Freeman, Jr., 6810 Quander Road, Alexandria, Virginia.

Q. When did you first reside at that address? A. February 1, 1965.

Q. Did you rent that house? A. Yes, I did.

Q. From Mr. Paul E. Sullivan? A. Yes.

Q. Have you lived at that address since? A. Yes, I have.

Q. And are you the same T. R. Freeman, Jr., who testified at the trial of Sullivan v. Little Hunting Park last month? A. I am.

Q. When you first entered into the lease arrangement with Mr. Sullivan, did he assign his first membership share [7] to you? A. Yes, sir, membership share 290.

Q. Was this part of the lease arrangement? A. Yes, it was.

Q. Has Mr. Sullivan continued to assign his share to you annually since 1965? A. Yes, he has.

Q. And was this assignment acted on by the defendants, Board of Directors of Little Hunting Park in 1965? A. Yes, the corporation refused Mr. Sullivan's attempt to assign the share to me.

Q. As a result of the board's disapproval of your assignment, were you able to use the swimming pool and other community facilities operated by Little Hunting Park? A. No.

Q. You were denied the use of those facilities? A. Right.

Q. Were you and your family able to do any swimming or play tennis or this type of thing during this period of the summer of 1965? A. We were able to swim only by the use of another swimming pool in which we were invited to attend as guests.

Q. You were a guest, not a member? A. Right.

Q. Was this at any cost to you? [8] A. Yes, we had to pay the fees each time we attended the pool.

Q. Did you use these facilities as frequently as you desired? A. No, we did not. The matter of being a guest, we felt we were imposing on other people in another pool, and also the cost.

Q. Dr. Freeman, did the action of the defendants in rejecting the assignment, have any affect on your employment? A. Yes, I was a new employee in the Department of Agriculture having accepted a job on February 1, 1965.

I realized I was a new employee, and I would be expected to function at a high level of efficiency. This matter of the swimming pool corporation and the denial of the assignment put me in the spotlight on my job, and caused me to be questioned by my employer.

Q. Caused you to be questioned by your employers? When was that? A. This was about July, mid July of 1965.

Q. What did they question you about? A. They asked me what was the nature of the problem, and what had happened. I explained to them I had leased a house, a membership share with the anticipation I would be able to use the share, and the corporation had denied the share to me, and we had some discussion about the problem.

[9] We discussed it with the local parish priest, and we were hopeful the question could be resolved quietly without any publicity, but inasmuch as the corporation would not communicate with me or give me the reason for the denial, and the fact that Mr. Sullivan filed for an injunction caused the publicity.

Q. Did your employer mention to you how they happened to learn of your involvement in this particular matter? A. Yes, the fellow who called me and showed me an article in the Washington Daily Post, which carried a story of Mr. Sullivan's injunction.

Q. The Washington Daily Post? A. Yes.

Q. What was his name, the man who questioned you? A. W. A. Miller.

Q. What was his position in the Department of Agriculture? A. He is an assistant to the administrator to the Foreign Agricultural Service in the Department of Agriculture.

Q. You mentioned he told you he read something in the newspaper? A. Yes, he had the article there with him, which I had not seen. I was at work on the job. I had read the morning paper. When he called me, he had the clipping from [10] the paper.

Q. What did he say to you about the article? What was bothering him about the article? A. I don't know what

was bothering him, but he seemed to be concerned that I was receiving the publicity.

Q. What was there, something unfavorable in the article? A. No, not in this particular article on this date, but at a later time another article appeared.

Q. When was that? A. This was July 17th, in which Mr. Harris, the attorney for Little Hunting Park, said the corporation had not denied my membership because I was a negro, and he had instructed the corporation not to give their reasons because this would leave it open to a nebulous character, which was a reflection on my character.

Q. Did the Washington Post indicate anything to that effect? A. No, it did not.

Q. That you had not been turned down because of your race? A. No, the Washington Post did not.

Q. As a result of your conversation with your supervisor, did your supervisor take any action? A. Yes, he did. It bothered me quite a bit because [11] I did not realize that the Department of Agriculture took such measures in this instance, but the Administrator of the Foreign Service wrote a letter to the Under Secretary of Agriculture, explaining who I was and what was involved. He also sent a letter to the Assistant Secretary of Agriculture for equal employment. This was particularly disturbing to me, inasmuch as I was a new employee and I had not completed my first year's probation and I understood that federal employees shouldn't get into any controversies. I was disturbed that he should write a letter to the Assistant Secretary of Agriculture.

Q. Is this true that any federal employee should not be involved in a controversy? A. That is my understanding.

Q. Was there anything about your job that was of a sensitive nature? A. Yes, I fulfilled a sensitive position in my department, which I had to undergo a security investigation.

Q. How high a security clearance? A. Top secret.

Q. What was the effect of this article in the Post in your mind? A. In my mind, it made me conspicuous and caused people to point me out and associate me with a controversial issue.

[12] Q. Did this have anything to do with the fact that it indicated it wasn't your race but something personally wrong with you? A. A remark by Mr. Harris, that it wasn't because I was a negro, but something wrong with my character.

Q. Mr. Freeman, I show you two articles, one taken from the Washington Post of July 16, 1965, and the other is from the Washington Post of July 17, 1965, and of the Washington Evening Star of July 16, 1965. Would you read the headline of the July 16, 1965, article from the Washington Post? A. "Fairfax County Swimming Pool Group Bars Negro Family Living In Subdivision."

Q. And would you start reading here from the article? A. "The Association's attorney, John Charles Harris confirmed this yesterday and said that the expulsion of Freeman was 'made on grounds other than race'. But, he added that the Board 'did not give its reasons and prefers not to give its reason.'"

Q. Is that a quotation? A. Quotes.

Q. Will you read this from the Washington Evening Star on July 16, 1965? A. "Pool's Ban On Negroes Goes To Fairfax Court."

Q. Would you start reading, starting with "The board." [13] A. "The board met on May 18th and turned down the request. John Charles Harris attorney for Little Hunting Park, said the Freemans—"

Q. Start with the quote. A. "John Charles Harris, attorney for the Little Hunting Park, said 'the Freemans were not turned down because they are Negroes.' He said he told the board not to give its reasons for the decision because that would lay the members open to suits for libel or slander. 'But it wasn't race,' he said."

Q. I show you another letter dated July 16, 1965, and who is that addressed to? A. Addressed to D. H. Jacobson, Assistant Secretary.

Q. She would be Assistant Secretary to what? A. Of Agriculture for International Affairs.

Q. Who was that from? A. Raymond Ioanes.

* * *

[14] Q. Would you read that letter, please? A. In full?
 Q. Yes, start with the subject. We already have the introduction. A. "Subject: Theodore R. Freeman, Jr.

The Theodore R. Freeman, Jr. referred to in the attached article on the front page of the "City Life" section of the Washington Post this morning was employed by the Foreign Agricultural Service on February 1, 1965. He is a recent Ph.D graduate of the University of Wisconsin. He has made excellent progress in his work with us and has shown outstanding promise for future development. Ted has been a quiet, cooperative employee who has impressed his fellow workers with his excellent personality and attitude. He advised us that the question of the swimming pool membership has been under discussion since sometime in May, but until this week it was hoped that the matter would be satisfactorily concluded without any public airing. Apparently he and his landlord have worked together and with the parish priest to try to settle the matter quietly. He also advises that he has been invited to use two nearby pools."

Q. Read the last. [15] A. Attachments, carbon copy to Dr. Seabron.

Q. Who is he? A. Dr. Seabron is Assistant Secretary of Agriculture for equal employment.

* * *

[16] Q. Dr. Freeman, in addition to what you have just mentioned about your employment, and this interview that you had with the supervisor, did the board's action in reviewing the assignment in any other way affect your work or work pattern or anything of this nature? A. Yes, aside from the general frustration of having been rejected, in the Fall or late September or early [17] October, 1965, it was necessary for me to take a South American trip. My employment sent me out. I was gone three weeks. Upon my return, my wife explained to me that several incidents had occurred such as throwing bottles at the house, and she had to call the police to find out what was going wrong.

This was particularly disturbing to me that people in the neighborhood would take advantage of my absence and harass my family. This affected my work.

Q. How did it affect your work? What do you do in your work?

THE COURT: Is this past the cut-off date, in which the membership was withdrawn?

MR. EVELETH: We contend the board of directors started this whole action. You cannot cut it off at the time Mr. Sullivan was expelled.

THE COURT: Go ahead.

THE WITNESS: My ability as a scholar, to work efficiently, involved my ability to use my mental processes. Incidents like these, disturb me mentally and inhibits my ability to work.

Shortly after I returned from this trip, I was assigned a job of writing regulations, which were written several times, and which involved my getting it together and consolidating it into one concise regulation. In [18] attempting to do this, I found myself daydreaming. My mind would run off. I called my home frequently, my wife, to find out if anything had happened or happened to the kids on the way home from school. I couldn't work efficiently.

BY MR. EVELETH:

Q. Did you attend the special membership meeting of Little Hunting Park in the Fall of 1965, at the public school?

A. I attempted to attend this meeting which was supposed to be at the request of some members, of a petition which had been submitted by some members of the corporation in accordance with the bylaws of the corporation. I went to the school and wasn't admitted into the meeting. Can I add?

Q. Were you prepared to speak at that meeting? A. I was prepared to speak to the membership at one of its meetings down there, and discuss the situation with them, and I was led to believe this meeting was the meeting that had been called for by the petition, but upon my arrival there, Mr. Lennon would not let me into the meeting.

Q. Mister who? A. Mr. Lennon.

Q. Is he one of the defendant directors? A. He was a member of the board. This was very [19] humiliating be-

cause people were there looking. People from the press were there, and I had every reason to believe that this meeting was called for the expressed purpose of hearing me and I was turned away.

Q. Dr. Freeman, you testified you moved into your present house in February, 1965. What was your relationship with your neighbors from the time you moved in until the action of the board of directors rejected you? A. Relationship with the neighbors up to that time had been a mutual relationship, such as had happened in other communities. There was nothing unusual about it. There had been no incidents. I began to associate with some of the neighbors. I would say the relationship was wholesome.

Q. And after the board acted, what was your relationship? A. I became isolated. People stopped calling, stopped stopping by, and although there were some who indicated they wanted to be sympathetic, they were a little leery about going out on a limb. One of the neighbors stopped speaking altogether, and started to avoid me.

Q. What was your relationship with that neighbor prior to that? A. We would talk in the back yard. We rode the bus, worked in the same department and talked about various [20] things.

Q. Afterwards? A. He avoided me.

Q. You still go to the bus together? A. No, he avoids me to the extent he won't get off the bus stop at the same bus stop I get off.

Q. Dr. Freeman, did the board's action have any affect on your physical state, sleep, appetite, all these things, physical activities? A. Yes, I would say the mental strain of being in a situation in which you are unwanted and are fearful that something will happen to you, to your home and to your family did cause me frustration and anxieties, and caused me loss of sleep, loss of appetite, and in fact, I lost weight during this Fall of 1965.

Q. How much? A. About ten or twelve pounds.

Q. Why didn't you sleep? A. This was in a period in which there had been a lot of turmoil over the country,

television stories and articles about homes being bombed, homes being shot into, so a slight noise at night startled me, and caused me to become nervous and jumpy. It wasn't a peaceful time.

Q. Dr. Freeman, as a negro, living in an area which I think is almost entirely white, isn't that correct? [21] A. Bucknell?

Q. Didn't you anticipate these problems when you moved in there? A. No, I did not. I lived in similar communities before.

Q. Where? A. I lived in a similar community in Texas. I lived in a similar community in Wisconsin, and there was no antagonism. Nobody bothered me.

I had assumed that the board of directors of Little Hunting Park getting to know me or discussing the problem with me, this community would be no different than any other community.

* * *

[31] LAURA FREEMAN

plaintiff, was called as a witness in her own behalf, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q. Would you please state your full name, given name?

A. Laura Freeman.

Q. Are you the wife of T. R. Freeman, Jr., who just testified? A. I am.

Q. After you moved into your present residence, I guess it was February, 1965, what was your relationship with your neighbors before the board of directors turned down the assignment? A. I would say it was real good.

[32] Q. Could you give a little more of what you mean, "It was real good?" A. Well, when we first moved in several people—We sold our furniture, most of our furniture when we moved from Wisconsin, and the neighbors loaned us furniture, but after the board's decision, they sort of

took—You know, they stopped speaking and they just sort of went to themselves and didn't have, you know, too much association with us any more.

Q. How did you feel as a result of their action? What was your personal reaction to this? A. Well, I several times went to, you know, a few of my friends' houses, and they would never return my visits, so I stopped going, and I saw it thrown up at the children.

Q. Do you have children? A. Yes.

Q. And how old were they in 1965? A. Four and one was almost six and the other was four.

Q. Did you observe their relationship with the children in the neighborhood when they first moved in? A. When we first moved in, they had friends, and then after the board's decision and the meeting, my kids couldn't ride on the streets without being called names.

* * *

[33] Q. Would you, if you could, tell in a little more detail what the relationship was before the board's action? A. Before the board's action, my kids did go to the other kids' houses. The other kids did come to my kids' house. After the decision and after this meeting particularly one neighbor told his little boy he didn't want my little boy in his yard.

THE COURT: You can't tell what somebody else said. It is hearsay.

THE WITNESS: Well, anyway, my kids couldn't go to their house, and when they did go to their house, their mother would go to the door and say, no they couldn't come out and play.

BY MR. EVELETH:

[34] Q. What affect did the board's action have on your physical well being? A. Well, after the neighbors did the way they did, and well, I just sort of stayed home and did my home work, made my housework and things, and then after my husband went away in October, in November, after he came back, we had a lot of harassments with the people, and November 14th I was rushed to the Emergency Hospital.

Q. November or December? A. December 14th.

Q. Could you describe what happened? A. Well, that morning I got up and got my family off and about 9:30, I went upstairs and had my morning shower and decided to wash my hair, and I felt nauseated, felt odd, felt nauseated, and I came downstairs and when I came down, I started whirling and my legs gave out on me. I started to cry, and I couldn't control myself. I called my husband and asked him to come home.

He rides the bus and it takes him sometime, so he asked me to call Mrs. Sullivan, and I did. She asked me to get the rescue squad over as quickly as possible. I said, no. She said, "O.K. I will be there as quickly as possible." Then she called my husband and asked him to come home as quickly as possible.

She came over as quickly as she could with her [35] little girl.

THE COURT: And you did what?

THE WITNESS: Went to the emergency room in Alexandria, and I was put in a wheelchair and rolled into the emergency room, and the doctor came and attended to me, and he said—

MR. HARRIS: Objection.

THE COURT: You can't tell what anybody said.

MR. EVELETH: She was told that, Your Honor. It isn't hearsay. She was a party to the conversation.

THE COURT: Objection overruled.

THE WITNESS: He gave me a shot and told me to go home and rest, and after I would try to recuperate and take it easy. It was only depression and my nerves, and he suggested that I get out of the house and get a job, which I couldn't do.

THE COURT: Which you couldn't do?

THE WITNESS: Which I couldn't do because I had a small kid at home, and I came home. It was back in January before I really did pull through good.

BY MR. EVELETH:

Q. Mrs. Freeman, did you have any prior history of this kind of thing? A. No.

Q. Breakdowns, nerves? A. No.

[36] Q. Your husband testified you lived formerly in Wisconsin. What was your relationship to your neighbors in Wisconsin? A. It was very good.

Q. Did you anticipate this reaction when you applied to the board of directors? A. No.

* * *

[41]

PAUL E. SULLIVAN

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Would you state your name and address for the record? A. Paul E. Sullivan, 7113 Coventry Road, Alexandria, Virginia, 22306.

Q. Are you the same Paul Sullivan who is the plaintiff in the case of Paul E. Sullivan v. Little Hunting Park, Inc.? A. I am.

Q. You testified at that proceedings. Is that correct? A. I did.

Q. And how long a period were you a member of Little Hunting Park prior to your expulsion? A. A little over ten years.

Q. Have you recently had occasion to examine the membership records of Little Hunting Park? A. Yes, I did. We obtained a box of them which we photostated.

[42] Q. Would you describe the nature of, or what the membership records consisted of? A. A set of three by five cards in a file box about ten to twelve inches long. The current memberships are arranged alphabetically by the last name of the shareholder, and the former members' cards were there, still are, not all of them are, and in the back of the box is the miscellaneous. The cards print the name, Little Hunting Park, and the number of the member's share, the name of the member and the names of some of his family. Often they have notations as to from whom they

were transferred, or from which among the share numbers they were transferred, or to whom they were transferred, or what share number they were transferred to, and in some cases they indicate the use of some tenant's address, which is in lieu of the names of some members of the family.

Q. You say you saw among the cards you examined the members' or rather membership cards for former members. About how many were there in those that you examined?

A. I would say perhaps 150 or 160 within that range.

Q. Among the various membership records that you examined, does it reflect that all memberships in Little Hunting Park have been held by private parties and individuals?

[43] A. No, to the contrary, there is a current membership for Messiah Lutheran Church, which is a church in the area. There were or appeared to be blocks of shares held by Gosnell, Inc.

Q. By whom? A. Gosnell, Inc. and the Monroe Development Corporation. These are two real estate companies which operate in our area, and a few scattered references to the Monroe Development Corporation, as a holder on the card, and -

Q. Was it the Gosnell Corporation? A. Gosnell, Inc. is the same. They incorporated, the Gosnell family, who for instance built Bucknell Manor and Beacon Manor, and continues to build.

Q. Was it Gosnell, Inc.? A. They sold the houses in Bucknell Manor and Beacon Heights, too.

Q. How many memberships would these two firms have held between them at various times? A. I think I could count by the actual cards and notations on the cards at least 25 actual memberships which were held by these two, but these were, the numbers were discontinued, although it looked like a block of say ten had been built by the Monroe Development Corporation and the remaining fifteen had been built by Gosnell, Inc., [44] and there was a block later on which looked as if it represented five or seven shares which I believe had belonged to Gosnell.

Q. Do the records reflect how long some of these cards

may have been held by these corporations or these various blocks of shares? A. This could be a minimum of years. The earliest block of shares, I think ranged from about 401 to about 425, taking these two companies in one block in this case, and some of these were transferred as late as 1964. Now, the 400 series must have been sold in either 1955 or 1956. I don't believe there were any shares that low in the early 400's in early 1957, so I would say a reasonable estimate would be they held these shares from five to seven years, something of that order, because the transfers from that block were from shareholders in the 1000 and 1100 range.

* * *

Q. In order that we can clarify the record, Mr. Sullivan, can you describe how a share gets a number, how a membership share gets a number in this corporation, and what you are speaking of, numbers in various ranges? [45] A. The original 600 shares were numbered, as I recall from 1 to 600, and as the shares were sold, the purchasers were issued new numbers above that range. That is, 601 would represent the share that was purchased from the person who bought it from one of the former members, and the former member's number was retired and except in one case, was never re-used as near as I can figure out.

There were as far as I could determine two cases where a single share number was used twice, and these were rectified. In one case an "A" was placed in the share number to distinguish it from the shares of the same number. In another case, there was a large "one."

Q. When you are speaking of these shares that were held by the corporations, Gosnell and Monroe, those cards with those names on them, do they have the share numbers on them? A. The ones that were there, there were gaps, visible gaps in the record of those who had been shareholders. The former owners, of which there were close to 600, are represented by only 150 cards, so in examining these to determine who had been and who had not been members, there was a notation on the cards from whom they were trans-

ferred and you can fill in a little bit from that. There is no complete record.

Q. Is there anyway of telling from the records what [46] use these two corporations made of the blocks of shares they held for periods of several years? A. From the cards I had and the record, there would appear, I would say, to be no information. I believe there might be a note that an assignment was made here, but nothing like a complete record of what happened to these memberships that the two corporations were holding. I would expect that some of them were assigned. Usually the Monroe Development Corporation buys and sells and handles some of the properties. They may have assigned some of the rentals of the property, the Gosnell Corporation, which is in the business of building, I would expect.

* * *

Q. Mr. Sullivan, in your examination of the membership records of the corporation, did you make any observations about the places of residence of the current members of the association? A. Yes, I did.

Q. Are you familiar with the four subdivisions that are [47] specified in the bylaws as constituting the area from which members are eligible? A. Yes.

Q. Are you also familiar with any expansions that have taken place in this area of eligibility? A. I am familiar with the expansion through 1965.

Q. Would you explain the basis, the area of eligibility from which the association draws its members? A. The area of eligibility is the area within which a person must live in order to purchase a share and as a stimulus for the purchase of shares by eligible persons, the privilege of being a guest to a member is denied to non-members in the area of eligibility. As a member who occasionally took guests, I maintained a current idea of what the area was because I did not want the people turned down.

Q. Has the area of eligibility been expanded from time to time? A. Yes, sir.

Q. By what means? A. The board of directors has ex-

tended the area of eligibility from the four subdivisions to the areas contiguous, and at this point they extend, as of 1965, they extended in a rather loaf shape around the pool grounds, extending out, I would say, from the farthest point to about [48] a mile, a mile and a quarter or a mile and a half, and I don't believe there is anything beyond that.

Q. How do you know this fact about the size of the area? A. As I say, as a member this is made known.

Q. Did you ever examine corporate records? A. In 1965, when I was trying to find out the reasons and basis for the board's action, which I considered to be inimicable to my interest, I exercised my right under the bylaws to examine corporate records once and proceed again. I was later not permitted to do this. This was quite contrary to the bylaws, but in the minutes as I can recollect them, as I reviewed them, it was made very clear that this line of eligibility in which people could buy memberships if they so desired, and the line if they were not permitted to be guests, extended from the property of Little Hunting Park down past behind White Oaks, down to an area I called Stonehedge, past the high school.

Q. What high school? A. Groveton, beyond a parking lane to a ramp northwest and swinging down in an irregular area to along Oak Drive, but including both sides of that street, and down Beacon Hill Road and south to Quander Road and swinging down to Mount Vernon Boulevard and swinging south on Mount Vernon Boulevard and up to Rolins Drive and the houses on [49] both sides to Little Hunting Park. This line actually touched the property line of the corporation.

Q. In examining the membership records, did you make a count or a tally of the number of persons whose current residences are shown as being within the area of eligibility?

A. Yes, I made some notes.

Q. Will you tell us how many persons you determined lived within the area of eligibility of current memberships?

A. According to the cards I have now, there are 424 members who live now within the area of eligibility.

Q. How many persons, total number of persons, live presently outside of the area of eligibility? A. Total number outside is about 117.

Q. 117? Do the records reflect persons who moved or persons who lived within the area at the time they bought their membership shares and subsequently moved? A. Yes, the original address is lined out and this new address is written in. The original address for 92 of these 117 people were within the area of eligibility.

Q. These show that they later after buying their shares, later moved outside of the area of eligibility? A. Yes, and this would be in accordance with the bylaws.

Q. Do the records show further down how many people at the time they purchased their shares, lived outside of [50] the area of eligibility? A. It would appear that there could be as many as 25. Maybe some of these cards are replacements for previous cards, if a card got too worn, but I would say that 25 would be the maximum number of people who lived outside the area.

Q. Do you know the circumstances that individuals may have purchased or may have been able to purchase shares even though they lived outside the area of eligibility? A. I remember in 1964 for a limited period the board of directors accepted a limited number of people outside the area of eligibility. I don't know how many people bought under those circumstances. I can think of at least one case where the man lived outside the area of eligibility. This was an indication that this was for the property on such and such a street.

Q. Would you clarify that? How did the records show this? A. There are a number of notations throughout the record, as I recall, that determines the placing of one or two for the use of the tenant at such and such an address. Whether this was one of them, I am not certain. It was associated with an address in the period of the area of eligibility and the person appears to have been living in Washington at the time they purchased, so I would expect that

the share was purchased for a property that belonged [51] to this person in the area.

* * *

[58] REDIRECT EXAMINATION

BY MR. BROWN:

Q. Of the 25 persons that you see from the records, there is no indication that they have ever lived within the area of eligibility, taking that group fo 25 alone.

MR. HARRIS: I don't believe there is any testimony to 25. Is there?

THE WITNESS: I believe I testified there were 25 people, and that there was no indication they lived inside the area.

THE COURT: Go ahead.

BY MR. BROWN:

Q. Take that group. Did you make any observations concerning the average distance that those people do live in the area of eligibility—excuse me—where the area where the Little Hunting Park swimming pool is located? A. Yes, I did. Most of them, I would say are within two to three miles.

Q. Of the pool? A. Of the pool, itself.

Q. How close are they to the outer limits of eligibility? A. Well, the greatest number are just beyond. There are a fair number scattered in Bellehaven, which in my [59] estimation are not in the area of eligibility, and that is adjacent to the line that runs up from Westgrove.

Q. Would you give us an idea of the number in the area? How many are within what radius of the park? A. I would say twelve to fourteen are within two to three miles radius of the pool, and you have to understand my conception of the miles are not extremely good.

Q. You testified that 92 current members formerly lived in the area or lived in the area of eligibility at the time they purchased the shares but since moved out? A. That is right.

Q. What would account for persons keeping their membership? Is there any reason? What would account for a

person's keeping his membership if he moved away?

THE COURT: If he knows.

THE WITNESS: Other memberships are much more expensive in other pools, is one reason. That would affect me, and I would imagine that would be the chief reason for most people. People with teen-age children can expect their kids to be living in the old neighborhood as much as they are living in the new neighborhood, so they might as well keep the membership. That is my analysis of it.

BY MR. BROWN:

Q. Would it be possible that some people would keep their share for an investment purpose, if they move to a [60] house and rent the old? A. I found myself in that situation. I imagine others did also.

* * *

DOLORES HOOVER

was called as a witness on behalf of the plaintiffs, and after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q. Would you state your name and address? A. Dolores Hoover, address 7418 Ravenna Drive, Alexandria.

Q. Are you married? A. Yes, sir.

Q. You have a family? A. Yes, two children.

Q. Two children? What is your occupation, Mrs. Hoover? A. Real estate agent, salesman.

Q. Are you associated with a firm of real estate brokers? A. Yes, sir, I am.

Q. Where is it located? [61] A. We have offices in the shopping center right near Landmark, the Alexandria address, but it is in Fairfax County.

Q. Is this a major firm in Alexandria? A. We like to think so.

* * *

Q. Do you hold a license to sell real estate? A. Yes, I do.

THE COURT: As a broker or salesman?

THE WITNESS: As a salesman.

THE COURT: How long have you been licensed?

THE WITNESS: Six and one-half years, since October, 1960.

BY MR. BROWN:

Q. Are you a full-time real estate salesman? A. I am.

Q. And have you been since that period? A. Yes, except for a brief period of a few months when I was busy with another activity, but I have been full time.

Q. Are you familiar with some of the selling tools [62] in the real estate business, particularly the multiple listing?

A. Yes, we are members of the multiple listing.

MR. HARRIS: Is it counsel's intention to make an expert of this witness?

THE COURT: I don't know what his intention is.

MR. HARRIS: I don't think there is sufficient foundation as a real estate salesman to testify as an expert in real estate.

THE COURT: Proceed.

BY MR. BROWN:

Q. Mrs. Hoover, what is your educational background?

A. I am a college graduate.

Q. Of what college? A. Smith College.

Q. Is there any graduate work that you have done? A. I have done graduate work, but I don't have a graduate degree.

Q. Did you take a course in real estate practices before licensing? A. I did. My major was economics in college, and I have a course in real estate, and I have several of the real estate courses that they gave along the way.

Q. Going back to the multiple listing, what does that consist of? [63] A. You mean the mechanics of it?

Q. What are the mechanics of it? A. It is a service by the Northern Virginia Realtors available to the member firm. When a home is listed by a member firm, a great deal of information about that property is reduced and put on a card. This card is duplicated. There is also a picture of

the property taken and put on the other side of the card. This card is duplicated and sent to every salesman of the multiple listing, advertising the home for sale and giving the pertinent information.

Q. What kind of information is normally given about a house? A. The information includes the size of all the rooms, the number of all the rooms, and obviously the size of the rooms, the construction details of the house, its age, the financing details, its location, the schools that are served by it, and such other pieces of information that the listing agent feels is relevant to the sale of the house.

Q. Does the card frequently contain information about some of the attractions or things that are part of the sale? A. Yes, there is a remarks column. This is what the listing agent attempts to do, to point out the desirable features of the house.

Q. What are some of the things that might be included [64] to make it more desirable? A. Well, there are a variety of things.

Q. Fixtures in the house? A. Fixtures, wall to wall carpeting, draperies, if it has a particularly attractive yard, if it is fenced or close to schools and shopping, if it has recreational facilities available, these are some of the things that are put on the cards.

Q. What sort of information is put on these cards as recreational facilities? A. Swimming pool, if it is available or included. Sometimes you have a membership included as part of the house.

Q. Included as part of what? A. As part of the house. Sometimes you find a swimming pool available.

Q. What has been your experience among people selling their houses if there is a swimming pool membership available? Do they usually list it on this service? A. I have never known them not to.

Q. Will you explain that, please? A. As an agent if you are listing a house, after you have gone through the preliminaries of measuring it and got the factual information, then you sit and talk to the owners about the desirable features

of the neighborhood, or what [65] he might like to see listed about his house, and if recreational facilities are available, they always mention it, and they usually like to have it put in.

Q. How many real estate transactions do you engage in? What is the extent of your work during the year? How much activity do you have as a sales person? A. I don't know. I can't tell you how many people I see in a year. That is a hard one.

Q. How many sales do you handle in a year, or rentals do you handle in a year as well as sales? A. Yes, we handle rentals.

Q. You handle listings for persons who want to sell? A. Personally I have listed houses and land, and I have sold residential real estate, not commercial but land and have listed and rented houses.

Q. How many transactions would you say you are involved in in a week or month or year? A. Well, all those things put together it would run a minimum of 25 transactions a year.

Q. How do you define transactions? A. Sales, listings, rentals.

Q. Does that include all of the contacts that you have? A. Oh, no, no, it is only involving documents, in other words, a listing agreement, sales agreement, rental [66] agreement.

Q. What additional contact do you have with people? A. We have considerable contact with clients, showing property.

Q. That is over and above? A. Oh, yes.

Q. Would you say a major part of your work is engaged in showing property, or a major part involves handling these 25 or so transactions? A. No. Each one of those transactions undoubtedly represent anywhere from a half dozen or twenty showings of a piece of property.

Q. Where do you do most of your work showing property, listing it, et cetera? A. In the City of Alexandria and the area south of it from the Mount Vernon District, from the area south to Mount Vernon.

Q. Are you familiar with the sort of things that people advertise or display, or tell you when they want to sell their house, the sort of things they want to list, or make known to a potential purchaser? A. Yes.

Q. What do they usually—

THE COURT: She has already answered that, under remarks.

[67] BY MR. BROWN:

Q. Among the people you show houses to, potential purchasers, what if anything, what role if any, does the availability of a swimming pool membership play? A. It is an important consideration with a large number of families, particularly families with children. I would say that the only sizeable group in this area of families purchasing homes, that it isn't perhaps not as much a consideration to our military officers because they have these facilities in their service groups. They are not particularly concerned with the facilities in the community. With a large number of house purchasers, potential house purchasers, they are very interested that these facilities are available.

Q. Do you sell properties in communities where there are swimming pools? A. Yes, I do.

Q. Where are they in the Mount Vernon District? A. There is Little Hunting Park, White Oaks. There is Wilton Woods. There is Stratford. There is Yacht Haven, and there are two under construction.

Q. When you are showing a potential client homes in those areas, do you as a salesman, make an effort to point out the swimming pool facilities? A. I not only point it out, but I drive them by.

[68] Q. What reaction do people show to this usually? A. Well, when they are interested, they are very interested. They want to know where it is, how far it is from the particular house in question. I find, you know, that one needs to answer their questions about the facilities of the area.

Q. How would you rate the availability of swimming facilities that other people look for in houses? A. I would have to separate a family with children. I would rate it with a family with children as a fairly high consideration.

Q. What are some of the other questions? A. The single most important thing to a family with children is size, whether it is within their price range and they can afford to buy it. After we have got over that hurdle, we look for other things in the neighborhood. It is high on the list of things they are looking for in the neighborhood.

+ * +

[69]

FLORA L. SULLIVAN

was called as a witness on behalf of the plaintiffs, and [70] after having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. EVELETH:

Q. Would you please state your name and address, please?

A. Flora L. Sullivan, 7113 Coventry Road, Alexandria, Virginia.

Q. Are you the wife of Paul E. Sullivan, who testified at this trial? A. I am.

Q. And your husband was formerly a member of Little Hunting Park? A. Yes, he was.

Q. Did you and your family participate in the affairs of the corporation during that period? A. Yes.

Q. Did you make use of the facilities? A. Yes.

Q. Did you receive a Splash, which is the publication of Little Hunting Park? A. Yes, we did.

Q. Did you read it? A. Yes, we did.

Q. Can you tell me what were the organized activities [71] of Little Hunting Park, aside from the fact that people came in on their own and did swimming? Did they hold any functions? A. Yes, I think they held about a half dozen parties during the season, one party for adults a couple of parties for teenagers, and one for small children, and an Easter egg hunt, I think. That is all I know of.

Q. You mentioned the Easter egg hunt. Was that closed to members only? A. It seems to me at the beginning it was open to the neighborhood children, regardless of whether

they belonged to Little Hunting Park, but later on I may have read in the Splash that it was for members only.

Q. I see. Did you receive this copy of the Little Hunting Park Splash, dated May, 1965, at one time? A. I believe Mr. Rizzo gave it to my husband, personally. I don't think it came in the mail.

Q. On the back of this Splash—

THE COURT: Unless you are going to introduce it into evidence, I don't want the witness to read from it.

MR. EVELETH: I intend to introduce it.

THE COURT: You introduce it first and before you introduce it, you show it to Mr. Harris.

MR. EVELETH: All right.

MR. HARRIS: I have no objection.

[72] THE COURT: What is the next number, four?

MR. HARRIS: Yes.

THE COURT: Admitted into evidence as Plaintiffs' Exhibit No. 4 without objection. Do you have two or three of them you want to offer?

MR. EVELETH: I have one additional exhibit.

THE COURT: Show it to counsel.

MR. HARRIS: I have no objection to either one.

MR. EVELETH: I offer into evidence Plaintiffs' Exhibit No. 4, which is the Little Hunting Park Splash, dated May, 1965, and Plaintiffs' Exhibit No. 5, dated March, 1960.

THE COURT: Without objection, they are admitted.

(The documents, marked Plaintiffs' Exhibits Nos. 4 and 5 for identification, were received in evidence.)

BY MR. EVELETH:

Q. Now, first of all showing you Plaintiffs' Exhibit No. 5, would you read that on the back, just that fact, the Easter egg hunt? A. "The annual community Eastern Egg Hunt given by the Little Hunting Park will begin at 10 AM, Easter Saturday, April 16th. All children of the area, twelve years and under, are invited to participate. Teenagers from the neighborhood will assist Mrs. Frank, Chairman of Special Activities."

[73] Q. I show you Plaintiffs' Exhibit No. 4, which is dated May, 1965. Contained on there is there a list of activities for that year? A. Yes.

Q. Start with Marjorie Madsen. A. Marjorie Madsen, our special activities director, has arranged the following schedule of events for the coming season: Teen-age party, June 16, Wednesday, swimming, 7 to 9 P.M. and then dancing until 11:00 P.M., admission free, but you will have to furnish your own refreshments from the concession stand, members only with one guest outside the area. Teen Party, July 14, Wednesday; swimming, from 7 to 9 P.M., then dancing until 11:00, admission free. At this one LHP gives you free refreshments, members only. Teen party, August 11th, Wednesday, swimming from 7 to 9 P.M. then dancing until 11:00, admission twenty-five cents per person, members plus one guest, refreshments from the concession stand. Adult party, July 30th, Friday, swimming from 7:30 to 9:00 P.M., entertainment and refreshments. Children's party, August 28, Saturday, swimming, games and fun from 2:00 P.M. until 5:00 P.M. Refreshments and prizes. In case of bad weather or conflicting events, other dates will be arranged.

Q. Mrs. Sullivan, during your membership dating back to the middle fifties in Little Hunting Park, is this a representative list of activities, social activities? A. Yes.

[74] Q. And are these the only ones listed on this page? A. Yes.

Q. During your membership at Little Hunting Park did they hold any other functions that you know of? Did their functions include dancing for adults?

MR. HARRIS: Your Honor, counsel is testifying, leading the witness.

THE COURT: Objection sustained.

BY MR. EVELETH:

Q. Did they have any other activities? A. Not that I know of. These were the only ones I know of.

Q. Now, these activities, Mrs. Sullivan, referred to in the

May, 1965, Splash, where were they held? A. In the pool area, right around the pool.

* * *

[86] Certificate:

This volume of the transcript was tendered to me June 12, 1967. In the morning mail on that date I received a copy of a letter from Plaintiffs' counsel, Robert M. Alexander, addressed to Defendants' counsel, John Charles Harris, dated June 9, 1967, [86A] advising Mr. Harris that the transcript was being delivered to me, Judge Keith, on the same day. The transcript was left at my office with my secretary on June 9, 1967. I received it June 12, 1967 at 9 A.M.

Signed by me June 20, 1967.

/s/ James Keith
Trial Judge

SIXTEENTH JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
FAIRFAX COUNTY
ALEXANDRIA CITY

Fairfax County Courthouse,
Fairfax, Virginia, 22030,
April 7, 1967

Mr. Robert M. Alexander,
1829 Columbia Pike,
Arlington, Virginia. 22204

Mr. John C. Harris
1500 Belle View Boulevard,
Alexandria, Virginia

Re: Sullivan v. Little Hunting Creek Park;
In Chancery No. 22751

Gentlemen:

I find for the defendants in this case. It is my opinion that the expulsion of Mr. Sullivan should be upheld. The defendant Club may be a community recreation facility, but it is not a trade organization. It is private and social as is shown not only by its charter and By-Laws but also by its minutes, which regularly include a recital of "social activities." The requirement of approval of membership applications by the Board of Directors, even though the prospect might meet all other qualifications, would seem to be conclusive on this point. This being so, the Court's power to review the action of the Board of Directors is limited. I find no reason to set it aside. The Board acted within the powers conferred on it by the By-Laws, and there was ample evidence to justify its conclusion that the complainant's acts were *inimicable* to the Corporation's members and to the Corporation.

I do not believe property rights are involved in this case to any material extent. The number of memberships is inconsequential when considered with the number of homes in the residential areas mentioned in the By-Laws. The fur-

ther fact there are such a large number of memberships available for sale with no buyers that the Directors considered the advisability of buying them in would appear to be a conclusive answer to this argument.

I do not find it necessary to pass on the defense that the stipulation of July 16, 1965, constituted a valid compromise and settlement and that under it the complainant is prevented from taking further action, although I am inclined to the view that such is the case.

Mr. Harris can prepare a decree in accord with the foregoing and submit it to Mr. Alexander for his endorsement and exceptions.

Very truly yours,

/s/ James Keith

Copy to:

Mr. Allison W. Brown, Jr.
Suite 501, 1424 16th Street, N.W.
Washington, D.C. 20036

DECREE

(In Chancery No. 22751)

This matter came on to be heard this 22d day of March, 1967, upon the bill of complaint, the answer of the defendants, upon the taking of evidence, upon argument of counsel, upon due consideration of the memoranda of law submitted by counsel, and the Court's specific finding that the defendant, LITTLE HUNTING PARK, INC., is a private and social club whose by-laws require approval of the Board of Directors for membership, and there was ample evidence to justify a finding that the complainant's acts were inimicable to the corporation's members and to the corporation and the Board of Directors of the defendant corporation acted within the powers conferred upon it by the by-laws of the corporation, it is therefore,

DECREED that the relief requested by the complainant be denied, to which ruling counsel for complainants except.

THIS DECREE IS FINAL.

ENTERED this 12th day of April, 1967.

/s/ James Keith
Judge

SEEN:

/s/ John Chas. Harris
Counsel for Defendants

SEEN AND EXCEPTED:

Robert M. Alexander
Allison W. Brown, Jr.
Peter Ames Eveleth

By /s/ Robert M. Alexander
Counsel for Complainants

SIXTEENTH JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY
FAIRFAX COUNTY
ALEXANDRIA CITY

Fairfax County Courthouse,
Fairfax, Virginia, 22030,
April 21, 1967.

Mr. Robert M. Alexander,
1829 Columbia Pike,
Arlington, Virginia.

Mr. John C. Harris,
1500 Belle View Boulevard,
Alexandria, Virginia

Re: Freeman v. Little Hunting Park, Inc.;
In Chancery No. 22752.

Gentlemen:

It is my opinion that the conclusion formerly reached in this matter that the defendant corporation is a private social club is controlling in this case. No constitutional right of the plaintiff has been violated. He does not come within the protection of the Civil Rights Act. The charter and by-laws of the corporation constitute a contract between the corporation and the members and between the members themselves. Under the by-laws, transfers and assignments are subject to the approval of the Board of Directors. All parties were aware of this fact. Section 13-105 of the 1950 Code of Virginia, relied on by the complainant, has been repealed. The refusal to approve the assignment to complainant appears to be consistent with the law and with the articles of incorporation. Therefore the relief prayed for will be denied.

Mr. Harris can prepare a decree in accordance with the foregoing and submit it to Mr. Alexander for his endorsement. I am sending a copy of this letter to Mr. Brown.

Very truly yours,

/s/ James Keith

Copy to Mr. Allison W. Brown, Jr.

DECREE
(In Chancery No. 22752)

THIS cause came to be heard this 12th day of April, 1967 upon the bill of complaint, the answer of the defendants, upon the taking of evidence, upon argument by counsel, upon due consideration of the memoranda of law submitted by counsel, and the courts specific finding that the defendant, LITTLE HUNTING PARK, INC., is a private, social club whose by laws require approval of the board of directors for transfers and assignments of membership; that no constitutional right of the complainants have been violated and they do not come with the protection of the Civil Rights Act, it, is, therefore,

ADJUDGED, ORDERED and DECREED that the relief requested by the complainants be denied, to which ruling counsel for complainants except.

THIS DECREE IS FINAL.

Entered this 8th day of May, 1967.

/s/ James Keith
Judge

SEEN:

/s/ John Chas. Harris
Counsel for Defendants

SEEN AND EXCEPTED:

Robert M. Alexander
Allison W. Brown, Jr.
Peter Ames Eveleth

By /s/ Robert M. Alexander
Counsel for Complainants

Suite 501, 1424 - 16th Street, N.W.
Washington, D.C. 20036
June 9, 1967

John Charles Harris, Esquire
1500 Belleview Boulevard
Alexandria, Virginia

Re: *Sullivan v. Little Hunting Park, Inc.*
In Chancery No. 22751
Freeman v. Little Hunting Park, Inc.
In Chancery No. 22752

Dear Mr. Harris:

This will confirm our telephone conversation of today in which I notified you that plaintiffs are submitting the reporter's transcripts in the above cases to Judge Keith today.

As I indicated, the transcripts contain innumerable errors, and it has been a major task to draft necessary corrections to make them intelligible. We will serve you on or about June 12 with motions to correct the two transcripts, and will ask Judge Keith to defer signing the transcripts until the end of the 10-day period permitted by the Rules. This will allow time for you to consent to the motions or to have them otherwise acted upon by the Court.

Very truly yours,

Allison W. Brown, Jr.
Attorney at Law

cc: Judge James Keith
Circuit Court of Fairfax County
Fairfax, Virginia

HARRIS AND ROARK
1500 Belle View Boulevard
Alexandria, Virginia

June 12, 1967

Allison W. Brown, Jr., Esquire
1424 - 16th Street, N.W., Ste. 501
Washington, D. C.

Re: Sullivan v. Little Hunting Park,
Chancery No. 22751

Freeman v. Little Hunting Park,
Chancery No. 22752

Dear Mr. Brown:

I have received your motion for the correction of the record in the above cases. It appears that your motions request 220 corrections in the record of the Sullivan case and 43 corrections in the Freeman case.

As I informed you on the telephone on Friday, June 9, 1967, I do not have a copy of the transcript and therefore, cannot consent to these changes without adequate review of the testimony.

Sincerely,

/s/ John Chas. Harris

cc: Judge James Keith
Circuit Court of Fairfax County

AFFIDAVIT

I, Allison W. Brown, Jr., attorney for the plaintiffs in the above matter, being duly sworn, do state:

That on Friday morning, June 9, 1967, I called John Charles Harris, Esquire, attorney for the defendants, on the telephone and informed him that I was submitting the reporter's transcript in this case to Judge James Keith that

afternoon. I further informed Mr. Harris that the transcript contained numerous errors, and therefore that the attorneys for the plaintiffs were filing a Motion for Correction of the Record, noticing it for hearing on the Court's next motion day, which would be Friday, June 16, 1967. I also stated to Mr. Harris that I would notify Judge Keith that plaintiffs' attorneys were filing such a motion and that I would request that Judge Keith defer signing the transcript until the end of the period permitted by the Court's Rules, in order to allow time for action on the motion.

That after talking to Mr. Harris, I wrote him a letter which I deposited postage prepaid in a mail box in Alexandria, Virginia on Friday afternoon, June 9, 1967. In said letter to Mr. Harris, I confirmed our telephone conversation, stating that I was submitting the reporter's transcript to Judge Keith that day, and indicating again that plaintiffs were filing a Motion for Correction of the Record, and further, that I would request Judge Keith to defer signing the transcript to allow time for Mr. Harris to consent to the motion or so that it could be otherwise acted upon by the Court.

That at approximately 3:45 A.M. on June 9, 1967, I took the reporter's transcript in this case, as well as a copy of my aforesaid letter to Mr. Harris, to Judge Keith's office in the Fairfax County Court House. I was informed by the Judge's secretary that Judge Keith was conducting a trial in Alexandria and that she did not expect him back in the office that afternoon. I then gave the aforesaid transcript and letter to the secretary, who took them into Judge Keith's office and I observed her place them on the Judge's desk.

That on Sunday, June 11, 1967, Robert M. Alexander, one of the attorneys for the plaintiffs, served on John Charles Harris, Esquire, a copy of the plaintiffs' Motion for Correction of the Record, by depositing it postage prepaid in the United States Mail. With said motion was served a notice that it would be brought to hearing before the Court on Friday, June 16, 1967. Said notice and motion were

also mailed on June 11, 1967, to the Clerk of the Court, with a copy of each to Judge Keith.

That the aforesaid motion was placed on the Court's calendar for Friday, June 16, 1967 and was heard that day by Judge Keith.

That Judge Keith stated in open court on June 16, 1967, that the reporter's transcript in this case had been available for examination in his office ever since it had been left there a week earlier, but since it appeared that Mr. Harris had not availed himself of the opportunity to examine it, Judge Keith stated that he would not act on the Motion for Correction of the Record until Mr. Harris indicated his agreement or disagreement with the changes requested.

That I consented in open court that, in order to facilitate Mr. Harris' examination of the reporter's transcript, I would make available to him on a loan basis the plaintiffs' duplicate copy of said transcript.

That I gave said copy of the transcript to Mr. Harris at 1:20 P.M. on Friday, June 16, 1967, and he retained it until 6:30 P.M., Monday, June 19, 1967, at which time he returned it me.

That at the time Mr. Harris returned the plaintiffs' copy of the transcript, he informed me that he had no objections to any of the corrections of the record requested by the plaintiffs, and that he had no further corrections to request on behalf of the defendants. Mr. Harris stated that he therefore had no objection to entry of an order correcting the record in the respects specified in the motion. Mr. Harris thereupon signed a proposed order which had been prepared by me for submission to Judge Keith granting the plaintiffs' Motion for Correction of the Record.

That the proposed order granting the Motion for Correction of the Record was submitted by the plaintiffs to Judge Keith on Tuesday afternoon, June 20, 1967.

/s/ Allison W. Brown, Jr.

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit

Personally appeared before me ALLISON W. BROWN, JR., who being duly sworn, did state the foregoing is true and correct.

/s/ Wells A. Proctor
Notary Public

Date: July 6, 1967

My Commission expires: April 3rd, 1971.

[Certificate of Service Omitted in Printing]

AFFIDAVIT

I, Allison W. Brown, Jr., attorney for the plaintiffs in the above matter, wishing to supplement and add to my affidavit previously given herein, and being duly sworn, do state:

That on Monday, June 12, 1967, at approximately 9:30 A.M. I called Judge James Keith on the telephone at his office, and he acknowledged having received the reporter's transcript, the copy of my letter to Mr. Harris dated June 9, 1967, and a copy of the plaintiffs' Motion for Correction of the Record. I asked Judge Keith at that time to defer signing the transcript until the Motion for Correction of the Record had been acted upon, and he indicated that he would do so.

/s/ Allison W. Brown, Jr.

STATE OF VIRGINIA

COUNTY OF FAIRFAX, to wit

Personally appeared before me Allison W. Brown, Jr., who being duly sworn, did state the foregoing to be true and correct.

Dated July 8, 1967.

/s/ William F. Flanders
Notary Public

My Commission expires June 8, 1970.

[Certificate of Service Omitted in Printing]

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

The petition of Paul E. Sullivan, Flora L. Sullivan, and William F. Sullivan, Graciela P. Sullivan, Ana I. Sullivan, Maire Sullivan, M. Dolores Sullivan, M. Monica Sullivan and Brigid Sullivan, infants, who sue by Paul E. Sullivan, their father and next friend, for an appeal from a decree entered by the Circuit Court of Fairfax County on the 12th day of April, 1967, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and Little Hunting Park, Inc., and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1, § 3 (f); *Snead v. Commonwealth*, 200 Va. 850, 108 S.E. 2d 399), doth reject said petition and refuse said appeal.

A Copy,

Teste:

/s/ H. Furun
Clerk

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

The petition of T. R. Freeman, Jr., Laura Freeman, and Dale C. Freeman and Dwayne L. Freeman, infants, who sue by T. R. Freeman, Jr., their father and next friend, for an appeal from a decree entered by the Circuit Court of Fairfax County on the 8th day of May, 1967, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and Little Hunting Park, Inc., and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1 § 3(f); *Snead v. Commonwealth*, 200 Va. 850, 108 S.E. 2d 399), doth reject said petition and refuse said appeal.

A Copy,

Teste:

/s/ H. Furun
Clerk

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1907.

SULLIVAN ET AL. v. LITTLE HUNTING PARK,
INC., ET AL.ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF APPEALS OF VIRGINIA.

No. 1188. Decided June 17, 1908.

PER CURIAM.

The petition for a writ of certiorari is granted and the judgment is vacated. The case is remanded to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Alfred H. Mayer Co.*, 392 U. S. 409.

MR. JUSTICE HARLAN and MR. JUSTICE WHITE dissent for the reasons stated in MR. JUSTICE HARLAN's dissenting opinion in *Jones v. James H. Mayer Co.*, 392 U. S. 409, 449.

UNITED STATES OF AMERICA, ss:

THE PRESIDENT OF THE UNITED STATES OF AMERICA

To the Honorable the Judges of the Supreme
Court of Appeals of the Commonwealth
of Virginia.

(Seal)

GREETINGS:

WHEREAS, lately in the Supreme Court of Appeals of the Commonwealth of Virginia, there came before you causes between Paul E. Sullivan et al., plaintiffs, and Little Hunting Park, Inc., et al., defendants, No. R-8257; and T. R. Freeman, Jr., et al., plaintiffs, and Little Hunting Park, Inc., et al., defendants, No. R-8176, wherein the judgments of the said Supreme Court of Appeals were duly entered on the 4th day of December A.D. 1967, as appears by an inspection of the transcript of the record of the said Supreme Court of Appeals which were brought into the SUPREME COURT OF THE UNITED STATES by virtue of a writ of certiorari as provided by act of Congress.

AND WHEREAS, in the October Term, 1967, the said causes came on to be heard before the SUPREME COURT OF THE UNITED STATES on the said transcript of record:

ON CONSIDERATION WHEREOF, it was ordered and adjudged on June 17, 1968, by this Court that the judgments of the said Supreme Court of Appeals in these causes be vacated with costs, and that these causes be remanded to the Supreme Court of Appeals of the Commonwealth of Virginia for further consideration not inconsistent with the opinion of this Court.

IT WAS FURTHER ORDERED that Paul E. Sullivan et al. and T. R. Freeman, Jr. et al. recover from Little Hunting Park, Inc., One Hundred Dollars (\$100) for their costs herein expended.

NOW, THEREFORE, THE CAUSES ARE REMANDED to you in order that such proceedings may be had in the said causes, in conformity with the judgment of this Court above states, as accord with right and justice, and the Con-

stitution and laws of the United States, the said writ notwithstanding.

Witness the Honorable EARL WARREN, Chief Justice of the United States, the fourth day of October in the year of our Lord one thousand nine hundred and sixty-eight.

Costs of Paul E. Sullivan et al.

and T. R. Freeman et al.:

Clerk's costs \$100

/s/ John F Davis

Clerk of the Supreme Court of
the United States

No. 1188, October Term, 1967

Paul E. Sullivan et al.,

v

Little Hunting Park, Inc., et al.

SUPREME COURT OF APPEALS
OF VIRGINIA

Present: All the Justices

PAUL E. SULLIVAN, ET AL.

-v- Record No. R-8257

LITTLE HUNTING PARK, INC., ET AL.

PER CURIAM

Richmond, Virginia

T. R. FREEMAN, JR., ET AL.

-v- Record No. R-8176

LITTLE HUNTING PARK, INC., ET AL.

On August 4, 1967, a petition for appeal was filed in this court by Paul E. Sullivan, his wife, and their seven minor children. On August 25, 1967, a petition for appeal was filed by T. R. Freeman, Jr., his wife, and their two minor children. The petitions sought the reversal of decrees of the Circuit Court of Fairfax County in two chancery causes wherein the Sullivans and the Freemans had filed individual bills of complaint against Little Hunting Park, Inc., a Virginia corporation chartered to operate a community swimming pool, and the directors thereof. The petitions asserted that by their bills, the complainants had sought injunctive relief and monetary damages for the allegedly wrongful acts of the defendants in refusing to approve the assignment by Sullivan of his membership share in the corporation to Freeman, a member of the Negro race, and in expelling Sullivan from membership in the corporation.

On December 4, 1967, this court rejected the said petitions and refused the said appeals because, in the words of the order entered in each case, "the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1 § 3(f); *Snead v. Commonwealth*, 200 Va. 850, 108 S.E.2d 399)."

On October 5, 1968, the clerk of this court received from the Supreme Court of the United States a copy of an order dated October 4, 1968, entered in the consolidated Sullivan and Freeman cases, amending an order entered June 17, 1968, and reciting that in the earlier order it was ordered and adjudged "that the judgments of the said Supreme Court of Appeals in these causes be vacated with costs, and that these causes be remanded to the Supreme Court of Appeals of the Commonwealth of Virginia for further consideration not inconsistent with the opinion of this Court."

The opinion of the Supreme Court referred to in its order of June 17, 1968, was as follows:

"The petition for a writ of certiorari is granted and the judgment is vacated. The case is remanded to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Alfred H. Mayer Co.*, U.S. , No. 645, decided this date."

The case of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S. Ct. 2186, 20 L. ed. 2d 1189 (1968), referred to in the opinion of the Supreme Court, dealt not with the question of the application by a state appellate court of its rules of procedure in determining its jurisdiction to entertain an appeal. Instead, the *Jones* case dealt with the question of the refusal of the Mayer company to sell Mr. and Mrs. Jones a home because Mr. Jones was a Negro. By applying in 1866 act of Congress, 42 U.S.C. § 1982, the Court found such refusal discriminatory and illegal.

In *Snead v. Commonwealth*, 200 Va. 850, 108 S.E. 2d 399, referred to in the orders of this court refusing the appeals in these cases, we held the terms of Rule 5:1, § 3(f) to be mandatory and jurisdictional, and for the failure of counsel for Snead to meet the requirements of the Rule, the writ of error and supersedeas was dismissed.

Our orders of December 4, 1967, refusing the appeals in these cases were adjudications that this court had no jurisdiction to entertain the appeals because of the failure of counsel for the Sullivans and the Freemans to meet the

requirements of Rule 5:1, § 3(f). Only this court may say when it does and when it does not have jurisdiction under its Rules. We had no jurisdiction in the cases when they were here before, and we have no jurisdiction now. We adhere to our orders refusing the appeals in these cases.

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 14th day of October, 1968.

Paul E. Sullivan, et al., Appellants,
against Record No. R-8257

Little Hunting Park, Inc., et al., Appellees.

T. R. Freeman, Jr., et al., Appellants,
against Record No. R-8176

Little Hunting Park, Inc., et al., Appellees.

From the Circuit Court of Fairfax County

Whereas, on July 15, 1968, and October 5, 1968, respectively, the clerk of this Court received and recorded copies of the order entered in these cases by the Supreme Court of the United States on July 12, 1968, and amended on October 4, 1968, in which it was ordered that the judgments of this Court be "vacated", and further "that these causes be remanded to the Supreme Court of Appeals of the Commonwealth of Virginia for further consideration not inconsistent with the opinion of this Court."

Upon mature consideration whereof, and for reasons stated in writing and now filed with the record, this Court adheres to its decision in these causes and to its decrees of December 4, 1967, which refused the appeals in these cases for the reason that the appeals were not perfected in the manner provided by law.

Which is ordered to be certified to the Circuit Court of
Fairfax County.

A Copy,

Teste:

/s/ H. Furun
Clerk

Supreme Court of the United States

No. 929 -----, October Term, 19 68

Paul E. Sullivan, et al.,

Petitioners,

v.

Little Hunting Park, Inc., et al.

on allowing certiorari. Filed April 1 -----, 19 69.

of Appeals

Virginia

The petition herein for a writ of certiorari to the Supreme Court ~~of the State of~~ Commonwealth of /
and the case is placed on the summary calendar.

And it is further ordered that the duly certified copy of the transcript of the proceedings below
accompanied the petition shall be treated as though filed in response to such writ.

Open Space Communities in the Market Place

... a survey of public acceptance

by

Carl Norcross

statistics by

Sanford Goodkin

Urban Land Institute

FOREWORD

This Foreword introduces the fourth study developed under a land development research program sponsored jointly by the National Association of Home Builders and Urban Land Institute. Previous studies in this program have been published by ULI under the following titles:

Technical Bulletin No. 40—*New Approaches to Residential Land Development, A Study of Concepts and Innovations*. January 1961.

Technical Bulletin No. 47—*Innovations vs. Traditions in Community Development, A Comparative Study in Residential Land Use*. December 1963.

Technical Bulletin No. 52—*Legal Aspects of Planned Unit Residential Development*. May 1965.

Technical Bulletin No. 50, *The Homes Association Handbook*, a related study on associations of property owners for the maintenance of common properties operating under agreements running with the land, was undertaken for the Federal Housing Administration and published in the Fall of 1964. A second edition containing a detailed index and a comparative analysis of recommendations contained in the *Handbook* with requirements subsequently adopted by FHA was issued in March 1966.

In a number of respects, the current study is the most important one undertaken so far in this program. It attempts to measure, quite successfully we think, the acceptance of many of the concepts and innovations discussed in more or less technical terms in the previous studies. Acceptance is not used here in the technical or professional sense; rather it is *acceptance in the market place*—the acid test of any new idea or concept in a free society—that has been examined. We believe this study clearly indicates to land developers, municipal officials, and planning professionals that when an open space community is properly planned and developed it is highly successful—both in the market place and as a community in which people live.

This report has special significance during those times when the housing market tapers off. Investigation shows that it is not enough just to have a good house; increasingly, the prospective home buyer and renter is looking for a good community as well. It is significant that three-quarters of the home buyers interviewed consider community environment to be either more important than the house itself or at least of equal importance. This provides a strong clue both to better residential land usage and to more successful marketing.

The findings of this report are fully as valuable to the small volume developer as to the large scale community or new town builder. The basic elements of attractiveness and marketability are applicable in either case. The 28 communities studied in detail are not only well distributed geographically and economically, but they also range in size from a 28-home neighborhood to the large so-called "new town" projects.

The field work on this study was undertaken for ULI by Dr. Carl Norcross of Dobbs Ferry, New York, and by the Sanford R. Goodkin Research Corporation of Los Angeles. The Goodkin Corporation was responsible for formulating the field questionnaires, conducting the home interviews, and supervising the computer and statistical data processing. Dr. Norcross, who is well known in the housing and community development field as a former editor of *House and Home*, conducted field investigations in 26 of the 28 communities covered, including most of the management interviews, and is responsible for the analysis and writing of the final report.

We would like to take this opportunity to express our sincere appreciation to the many residents, developers, professionals, and public officials who furnished the information which made this investigation and analysis possible.

MAX S. WEHRLY
Executive Director
Urban Land Institute

RECREATION

Open space communities and recreation facilities go hand in hand. A developer who has the space usually uses some of it for recreation. Many developers are asking "What recreation? What is most used and most worth the money?"

From the Developer's Viewpoint

First, a few generalities from a combination of the management and the consumer interviews. Almost no developer, who has installed recreation facilities in his subdivision, regrets it. Looking back, most wish they had put in more and earlier.

In Tampa, developer Matt Jetton says, "Every subdivision should be built around recreation. The best way to sell families with children is to let the kids see your recreation areas."

In St. Louis, developer John Fisher says a pool and recreation center are his best features. He believes they have been a major factor over the last eight years in drawing his families together and "making a subdivision into a community."

It is expected that all-adult or retirement communities go in strongly for recreation. "You have to have recreation," says Gordon Frazar of Lake San Marcos. "Another adult community near here couldn't sell a house until they put in a golf course and a recreation area." But recreation seems to be just as important for other age groups. It is as successful in the north as in the warm-weather states. It works as well in small subdivisions as in large new towns like Reston. And recreation works for families in single-family houses, garden or high rise apartments, or in townhouses.

What Did the Home Buyers Say?

There were several questions to get home buyers' reactions to recreation. When people were asked why they would recommend their community to a friend as a good place to live, 43

per cent answered that the community was desirable and enjoyable, and 20.8 per cent indicated recreation facilities were a reason. At Crofton, where there is a golf course, tennis, swimming pool, and a ball field, 27 per cent named recreation. At New Seabury, which has two golf courses and a variety of facilities, 51 per cent named recreation. At the Four Seasons in St. Louis, which has a 9-hole golf course and a pool, 19 per cent named recreation. At Pomeroy Green, where a pool is the principal facility, 25 per cent named recreation. At the Highlands, which has a lake and a fine beach, 19 per cent named recreation. Radburn was the high point: 56 per cent named recreation.

When buyers were asked why or why not the community was as important to them at the time of the interview as when they purchased, 23.6 per cent named recreation as one of the reasons. More named recreation than any other feature except that the community as a whole was desirable and enjoyable.

When families were asked if there were other subdivisions which they seriously considered, those who said yes were asked why they bought at this one rather than the others. Some 16 per cent said the price of the house suited them better, 15 per cent said location and 11.7 per cent said recreation facilities made the difference.

Pools Are Most Popular. Swimming pools are at the top of the list. Even though used only three months a year in most areas, a pool gets more use in that short period than other facilities that are used year round. The value of a pool both to families and the developer depends directly on activities planned with the pool as a center of the program. A pool with no special program is a real asset. But a pool that has a strong program director and a program all day long for six or seven days a week for young and old can become the talk of the community and its greatest selling feature. The

proof is that at several communities where there is both a golf course and a pool, the pool usually (but not always) sells more houses than the golf course.

To be most useful, a pool needs to have a separate area for divers and now some Z-shaped pools have a rectangle at one end for divers and one at the other for "standees," with the long center section for the swimmers. Many



Pool and clubhouse are center of activities at Fisher & Fichtel's Carrollton in St. Louis. An intensive program of all types of recreation and youth activities makes this community center one of the busiest in the country.

pools become obsolete in two or three years because they were built too small. To avoid this, at Carderock Springs, near Washington, developer Edmund Bennett started off with three pools. There is the usual small wading pool for toddlers. He has a third pool about 20' x 20' for children from about six to ten who can swim but who would be a nuisance in the big pool. They have to pass a swimming test before they may use the large pool. An important part of a wading pool is adjoining space for parents to sit.

It is an asset if a pool is Olympic length—35 meters—so that official races may be held. Some developers, such as the Almaden Country Club near San Jose, have had much favorable publicity from inviting nearby high school swimming teams to use their pools for practice and for meets.

The amount of paved deck around a pool is of great importance. A big deck makes a pool seem larger and is a major factor in keeping a pool from looking too crowded.

The pool building, containing showers, toilets, and usually a small office and storage room, is commonly used only three months a year. If it is enlarged with a meeting room, it can be used 12 months a year. For this additional investment, a developer can receive many times the benefit of having just a pool. A meeting room that is no larger than a two-car garage is far

better than no room at all, but the room should be larger than that. Ideally there should be a room large enough for meetings and home-movies, and one or more smaller committee rooms. A solution for the developer who does not want to spend the money for a complete building at the beginning is a building designed so it can be built in stages. Stage 1 can be the minimum size permitted by the health authorities, stage 2 with small meeting room, and stage 3 the complete building.

Mistakes developers admit they made with pool buildings are: the building was too small, it could not be expanded (often there is no space for expansion, the design was nothing to be proud of, the landscaping was poor, and when a competitor built a better-looking clubhouse nearby the early one was something to be ashamed of.

Playgrounds and Ball Fields. Children need a place to play, but experience shows they won't go more than about a quarter-mile to do so except for Little League games or other organized sports. Many boys would rather play ball in the street than to walk five or six blocks to a ball diamond. At Ledyard, Connecticut, the builders of The Highlands put a ball field near a lake in what seemed an ideal location. But boys consider it too far from their homes and don't use it.

However, at Carrollton, St. Louis, the ball fields and tennis courts are in a nine-acre central recreation area where children are in the habit of going to the pool and community center. They walk or ride bikes there to play, although many travel half a mile or more.

Playgrounds are not needed when individual lots are so large that boys can play ball in their backyards. However, every planner should ask himself, "Where will the children play?" and find a satisfactory answer. A nearby school that permits children to use its playgrounds is a good solution for children living in that area.

Small playgrounds close to houses are a nuisance to neighbors if balls are knocked or kicked into nearby yards, or if windows are broken. Noise is also an irritation. In one town-house project, adults living near playgrounds have driven boys away because of the noise they made.

When townhouses or garden apartments are grouped around a common green or small playground, the recreation facilities are intensively

tennis courts were. The developer had neither ground nor money for tennis courts and got in trouble with his buyers.

One builder promised his buyers a swimming pool, but did not say when he would build it. After two years the pool was not built and the buyers formed a committee to protest. The builder lost faith with his buyers which he never regained. Later, he built a pool and a clubhouse which were successful. He now says he should have built the pool at the beginning and wishes he had built a more expensive clubhouse. A West Coast builder spent about \$75,000 for a pool, but, by the time it was ready for use, he had sold most of his houses and realized that the pool had done him little good as a sales feature.

A summary of advice from developers in all parts of the country is this: "Build your recreation facilities early and put in more than you think you should." Every developer who built a pool or a playground during the second or third year of the project wishes he had built them at the beginning.

"If I were starting this community again," says John Fisher, "I'd build all the recreation

at one time. I'd show the total package at the beginning. It is easier to do. It is more tangible because everyone can see it. All it costs is the extra interest on the money for another year or so."

It also pays to clean up small parks, or almost any area that will later be used as open space. An eastern builder of a 100-acre subdivision donated a ten-acre park to his buyers. It showed as a park on his plat. But it did him no good as a sales feature and was even a liability in selling nearby houses, as it was a tangle of undergrowth and dirty newspapers. No one looking at it knew it was to be a park.

Recreation for Children and Young People

The popularity of various recreational activities for children as reported by 721 families is given in Table 18.

When all communities are taken together, some 48 per cent of families mentioned that children used swimming pools, beaches, or water activities. This is more than double the popularity of the next category of parks and playgrounds and shows that pools and water are in a class by themselves. It is true that several

TABLE 18
Recreation Facilities Used by Children

	1	2	3	4	5
	PARKS AND PLAYGROUNDS	SWIMMING POOLS, BEACH & WATER & ASSOCIATED FACILITIES	GOLF COURSES & ASSOCIATED FACILITIES	PLANNED INSIDE ACTIVITIES (BRIDGE, TENNIS, ETC.)	OTHER RECREATION AND COMMUNITY FACILITIES
*Total Communities	23.9%	48.4%	7.4%	15.3%	8.7%
New Seabury	14.9	66.0	31.9	12.8	19.2
The Highlands	16.7	50.0	11.1	19.4	8.3
Village Green	27.8	—	—	—	—
Radburn	35.7	60.7	—	31.2	13.4
Georgetown South	64.8	—	—	—	—
Crofton	11.4	68.2	45.4	31.8	11.4
Heather Hills	—	65.5	—	—	—
Miami Lakes	39.2	50.9	5.9	3.9	15.7
Reston	19.4	41.7	6.9	25.0	23.6
Four Seasons	—	61.9	23.8	—	—
Ilex Hills	NONE	—	—	—	—
Pomeroy Green	44.6	85.7	—	16.1	5.4
College Green	35.9	58.4	—	11.3	—
Lakeside	—	50.0	—	—	—
The Bluffs	—	35.7	—	—	—

Tennis and Softball are in Column 5.

Due to multiple responses, or no response, the percentages do not total 100.

*These percentages are based on the 721 respondents, whereas the percentages in each community are based on the number of respondents in the individual community.

communities had no other facilities than a pool, so a pool would of necessity rate highest there. But pools were most popular even at places with many activities.

Parks and playgrounds rank as second most popular when all communities are considered. At New Seabury and Crofton, golf was number two. At Reston, golf was at the bottom for youngsters, and behind inside activities such as the teen-age club, bridge, and other community activities. (Golf may have had a lower rating because many families moved in late in the fall.) Even at Radburn, which has magnificent parks and open areas, the swimming pools were almost twice as popular as parks or playgrounds.

At Crofton, while the pool and the lake were most popular, golf was mentioned by 45 per cent of the families, a higher percentage than anywhere else. There the golf pro has classes for youngsters and it is also apparent that many fathers are encouraging their children to play. At Ilex Hills there are some open areas, but neither children nor adults seem to consider them as usable for recreation.

The ideal situation seems to be a fair balance of all types of recreation to keep children busy throughout the year, as is done at Miami Lakes, Reston, New Seabury, and Crofton.

The use of children's recreation, tabulated by age groups, frequency, and season is shown in Table 19. Columns 1 through 5 are the same as for Table 18. Column 2 shows that water facilities are used by children of all ages. Winter use reflects the fact that the Highlands, New Seabury, Crofton, and Reston have lakes which freeze in the winter and may be used for ice skating. Of course fishing and sailing can be carried on during much of the year.

Adults' Use of Recreation Facilities

Pools or other water facilities were more than twice as popular as anything else. At Heather Hills, more adults than children use the pool, presumably because many children are too young to swim.

Golf is most popular at New Seabury, Miami Lakes, Crofton, and Four Seasons. The range of activities at Radburn, Reston, New Seabury, and Crofton reflect the variety offered at those places. Table 20 shows a breakdown by community.

Indoor activities, shown in column 4, are popular at places which have them, including bridge, dramatics, hobby classes, listening to lectures on art, literature or gardening, watching homemade travel movies, and so on. People

TABLE 19
Children's Recreation by Age Group, Frequency, and Season

Age Group	PARKS AND PLAYGROUNDS	SWIMMING, POOLS BEACH & WATER & ASSOCIATED FACILITIES	GOLF COURSES & ASSOCIATED FACILITIES	PLANNED INSIDE ACTIVITIES (BRIDGE, TEENAGE, ETC.)	OTHER RECREATION AND COMMUNITY FACILITIES
0-1 yr 5 mos.	1.5	1.9	—	—	0.1
1½-2 yrs 11 mos.	—	5.7	0.3	—	0.3
3-4 yrs 11 mos.	12.5	13.0	0.3	0.6	1.1
5-11 yrs 11 mos.	14.2	28.4	2.8	8.9	4.7
12-16 yrs 11 mos.	2.5	18.4	4.2	7.8	4.4
17 and over	1.0	10.4	3.3	3.7	1.9
How Often Used					
Very often	18.7	38.3	4.7	9.4	5.6
Moderately	3.9	9.0	2.5	0.6	2.5
Somewhat	2.6	2.6	0.3	1.7	0.6
When Used					
Summer	24.3	48.1	7.5	12.9	6.7
Winter	16.1	6.8	4.0	9.0	6.7

talk about such things and tell their friends about them. In communities that have well-directed, year-round programs for both adults and children, the program director may be responsible for almost as many sales as the sales staff.

If popularity statistics shown above do not seem to bear this out it may be because most communities studied did not have a healthy, year-round program for adults, and very few had one for children. At some new developments, year-round programs were just getting under way at the time of the interviews.

Table 21 shows more information on adult recreation.

Walking as Recreation

For many adults, especially men, walking is a pleasurable recreation. If they are not golfers, this is their principal recreation, especially during seasons when a pool or tennis courts are not open. Walking is supposed to have been replaced by the automobile and to a great extent that is true. However, in most suburban communities there is no place to walk.



Pedestrian paths at Radburn and large, open parks are unique feature. Houses facing parks have highest resale.

TABLE 20
Recreation Features Used by Adults

	1	2	3	4	5
	PARKS AND PLAYGROUNDS	SWIMMING POOLS, BEACH & WATER ASSOCIATED FACILITIES	GOLF COURSES & ASSOCIATED FACILITIES	PLANNED INSIDE ACTIVITIES (BRIDGE, ETC.)	OTHER RECREATION AND COMMUNITY FACILITIES
*Total Communities	4.0	53.5	20.8	15.8	15.0
New Seabury	12.8	72.3	78.7	—	10.6
The Highlands	—	61.1	11.1	—	—
Village Green	2.8	—	—	11.1	8.3
Radburn	7.1	64.3	—	35.7	24.1
Georgetown South	22.2	—	—	—	—
Crofton	—	70.4	72.7	18.2	20.4
Heather Hills	—	86.2	—	—	—
Miami Lakes	—	19.6	64.7	—	7.8
Reston	—	53.4	27.8	20.8	58.3
Four Seasons	—	57.1	66.7	—	—
Ilex Hills	NONE	—	—	—	—
Pomeroy Green	—	75.0	—	28.6	8.9
College Green	—	71.7	—	35.9	—
Lakeside	—	60.0	—	—	—
The Bluffs	—	53.6	—	—	—

Due to multiple responses or no response in each community, the percentages do not total 100.

*These percentages are based on the 721 respondents, whereas the percentages in each community are based on the number of respondents in the individual community.

Walking was reviewed under the Safety and Security section of Chapter 4. In the 15 communities where interviewing was done, 41.5 per cent said they did more walking than in their previous neighborhood. At Reston, where the developers made a special effort to create pleasant places to walk, 75 per cent of families

said they did more walking. At New Seabury, Crofton, and Georgetown South, about 50 per cent of families did more walking, but more than a third of families in other communities said they walked more. It is clear that here is a popular form of recreation which is overlooked by many developers.

TABLE 21
Adult Recreation, Showing Who Uses, Frequency and Season

	PARKS AND PLAYGROUNDS					SWIMMING POOLS BEACH & WATER & ASSOCIATED FACILITIES					GOLF COURSES & ASSOCIATED FACILITIES					PLANNED INSIDE ACTIVITIES (BRIDGE, ETC.)					OTHER RECREATION AND COMMUNITY FACILITIES				
	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5	1	2	3	4	5
How Often Used																									
Very often	1.9	29.9	9.0	7.2	8.7																				
Moderately	0.7	17.8	10.8	6.4	5.8																				
Somewhat	1.4	7.5	2.1	2.9	1.1																				
Who Uses the Facility																									
Husband	0.4	4.3	4.3	5.7	2.2																				
Wife	0.4	7.2	1.1	1.8	2.5																				
Both	3.0	42.4	15.8	9.6	10.8																				
When																									
Summer	3.9	53.8	20.5	14.2	12.5																				
Winter	2.1	6.2	14.8	7.9	12.6																				

Contents

IT'S TIME TO PUT IT IN WRITING (Editorial)	6
GUARAN-TEE... WAR-RAN-TY <i>An effective aid in selling new homes to the demanding market. Builders have the backing of manufacturers in satisfying their buyers—eliminating call backs</i>	75-85
WHAT HAPPENED TO SARAH? <i>Practical Builder re-visits two-year old low-cost housing project and finds significant lessons for any builder</i>	86-89
HOW TO SUCCEED IN LOW COST HOUSING? <i>Jesse Baker, one of the builders in Project SARAH has stayed with the low-income market</i>	90-92
COMMUNITY SWIMMING POOLS <i>Some of the pitfalls and problems as outlined by experienced builders</i>	93-98
BUILT-IN BARS: <i>A new "must" in \$40,000 houses?</i>	99
235-LB ROOFING COSTS MORE - - BUT <i>It's better and you can sell it</i>	100-101
BEST REASON FOR FLOOR TRUSSES: <i>They give saleable space</i>	102-103
WHAT DOES IT TAKE TO SELL HOUSES TODAY? <i>A trend report based on Practical Builder's 14th Annual Merchandising Contest</i>	104-107
HOW THE SELDINS SELL HOUSES IN OMAHA <i>A winning merchandiser's case history. They cut the budget but increased their share of the market</i>	108-112
DESIGN LEADERSHIP AWARD <i>The Practical Builder Design Award goes to a townhouse builder—plus design ideas that sell houses</i>	113-120
THIS BUILDING BUSINESS	15-18
GOLDEN RIM SECTION FOR WESTERN READERS 120a-120d <i>Appears in all issues sent to Washington, Oregon, California, New Mexico, Arizona, Texas and Nevada</i>	

Here's How	What's New	
Invisible supports for shelves	45	Pre-hung garage door in 15 min. 141
Application of red cedar shingles	45	Foam problem solved in laundry 143
Polystyrene insulation for walls	46	Computer consultation service 143
Special platform on crane	49	Door opener features reverse 169
Two-hour fire-resistant deck	49	Pre-finished siding guaranteed 182
Good slab construction	52	Vinyl surfaced doors 184

PRACTICAL BUILDER, Vol. 39, No. 2, February 1964 Issue, Copyright 1964, published monthly by Industrial Publications, Inc., a subsidiary of Cahner's Publishing Co., Inc., Emmett St., Bristol, Conn. Subscription price: U.S. \$2.00 per year, \$3.00 for three years; all other countries \$10.00 for one year. Second-class postage paid at Bristol, Conn. Subscription mail to PRACTICAL BUILDER, 3 South Wabash Ave., Chicago 3, Ill. This issue is published in national and separate editions. Additional pages of separate editions allowed for as follows: Sp1—(38a-38d); Sp2—(42a-42b); Sp3—(66a-66b) Golden Rim Section; Sp4—(120a-120f); Sp5—(122a-122b); Sp6—(172a-172b).

The community swimming pool

*Here's what builders
across the country re-
port they found about its
assets and liabilities*

Every builder or developer who creates a neighborhood of more than 50 homes today must consider community environment and recreational facilities.

Recreational facilities take many forms, but the community swimming pool is considered by most builders as one of their strongest possible sales appeals to families of all ages and incomes.

The question with most builders is not "Shall we provide the facilities?" but rather, "Just how much can we afford to provide?" About the only builders or developers who can ignore this question are those blessed with "built-in" facilities such as nearby lakes and parks.

"At Hoffman Estates, our major pool is a result of three-way cooperation," says F&S's Lowell Siff.

The Olympic-size (\$165,000) pool, which F&S Construction Co. of Chicago is currently featuring in its advertisements for \$17,000 to \$25,000 homes, has cost F&S only the price of the land and \$10,000 worth of memberships.

"We did it by enlisting the help of a local service club and the municipality," explains Lowell Siff of F&S. "The three-way cooperation is bizarre, but it worked for us and could possibly work for others."

"To get this pool club, which our community of 3,000 homes needed badly, we first enlisted the help of the local Lions Club. It agreed to sponsor the pool and we decided over a five-acre tract to them. We purchased \$10,000 worth of memberships to get the ball rolling, and they raised another \$50,000. When the mortgage is paid off, the pool and facilities will be decided over to the village, which has agreed to operate it."

"We built our pool to upgrade the subdivision image—and to put buyers in our houses."

Bob Alexander, building in two Chicago suburbs, has built a pool for homeowners in his Columbia Homes Streamwood subdivision, but not in his Hampton Park, another Chicago community he is developing.

At Streamwood, Alexander had reason to build the pool. He had stepped into a potentially hot subdivision where two previous builders had backed out. The pool, of course, provided added incentive to buy, and Alexander's vice president

Dick McCool claims that the pool helped sales. But—

"With our average house running about \$18,500, we find our buyers take the attitude that the pool is gravy. Too few families buying this price-class house stop to realize that maintenance costs money, and that they, too, have a responsibility if they want to enjoy the advantages of a pool."

Alexander's investment now, including the six acres for the pool site, stands at about \$150,000. He

Do you have to build expensive facilities and deed them over to your buyers?

"No," says Omaha's Ted Seldin.

"We have a healthy investment in club memberships, and will have until our pool club reaches its maximum membership. Our homeowner association built its pool and owns it outright; our only investment is in time spent on the project and the profit we lost on land sold to the association at cost."

Seldin says, "A pool is a 'must'—

One other pool club in Hoffman Estates is a much smaller owner-sponsored facility. A group of owners sparked this one themselves, came to F&S with their proposal. F&S sold the site for cost, bought \$3,000 worth of stock (\$1,500 worth has already been sold back). There are 200 members who paid \$150 each, and their assessment runs only \$42.50 per family per year. The 18,000 sq. ft. pool cost \$25,000 plus land valued at \$5,800. The size of the pool worked out satisfactorily for its membership says Siff.

Siff's advice to other builders:

has already decided the pool over to a non-profit corporation which operates with Alexander's executives as directors and officers. Members pay \$35 per year per family. "At the end of five years, we hope to reach a break-even point," says McCool. "Then we will either step out of our directorial shoes and let the members assume full responsibility, or we will deed it over to the city if it offers to form a park district and guarantee maintenance." Along with many other builders, McCool thinks this may be the ideal solution in any city or town with a cooperative and progressive park system.

ed we wouldn't attempt to sell houses without one."

But Seldin has reservations:

"Though we use the pool to merchandise our houses, we have been surprised at the number of families who buy, and don't take advantage of the facilities. This doesn't mean we wouldn't build a pool or provide some kind of recreation facilities," says Seldin, "it merely means that before making a heavy investment every builder should study the needs and wants of families that buy his houses in any specific price category then provide the right type and size facility."

Seldin started his houses—the

pool came later. A community club was organized and formed its own not-for-profit corporation to own and operate a pool facility.

The pool is fan-shaped, measuring 82½' x 30' x 45'. Membership goal is 400 and initiation fees run \$160. Annual dues are \$35 per member. Members can sell memberships back to the club or to an approved buyer if they move. Current family membership is 250.

Seldin worked closely with the club, sold the land at cost, designed the pool, acted as general contractor, financed construction, and then built the pool at book cost.

His investment to date includes possible profits he could have real-

ized on lots used for the club, time involved, and the cost of 70 memberships he purchased to give the club its loan equity. The money tied up in original memberships provided seed capital for construction and will furnish inducement for renting apartments planned for a later date.

"Our membership figure is disappointing," says Seldin, who thinks the reason lies in the current family age-levels. "Any club pool is of questionable value to families with infants and small children who can't get there on their own. But just wait until those children can get on their bikes and take off for the day."

"For a 200-house subdivision, in the \$20,000 to \$25,000 class, we think the pool club serves our buyer and adds to our prestige.

"First, we would plan ahead, setting aside strategic land for the purpose, planning to donate it to the homeowners, but recapturing the land value in sale prices.

"Next, we would watch carefully to find leaders for our homeowners association to spearhead formation of a not-for-profit corporation.

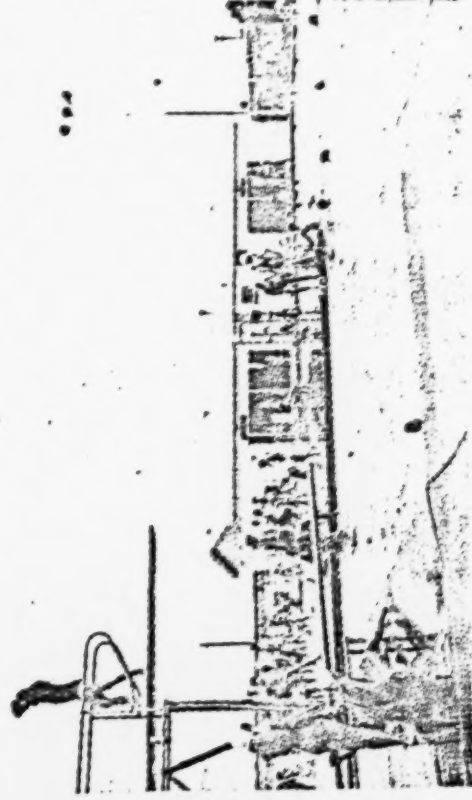
"Finally, we would help locate financing and trade seed capital for memberships which we could sell to future buyers."

"Out of 1,500 families who are entitled to join at \$35 per year (and no initiation fees), the Dolphin swim club at Streamwood has 319 member families. No maximum has been set on membership, but as homes are built the membership will obviously increase.

"At this price level, we'd think twice before building another pool," according to McCool. "The real problem is that the builder is too often in the dark as to what to build and how his buyers will react. You simply can't gauge your response until you set the dues, send the membership notices out—then hope the formula is right."



continued



In California, Ed Eichler of Eichler Homes says, "We learned our lessons—the hard way."

Eichler's reason for developing his first pool-park at Green Meadow near Palo Alto, Calif., was competition. According to Ed Eichler, president of Eichler Homes, "Design had been refined—we felt that a recreational facility would provide the competitive advantage." It did help sell homes, but Eichler admits they made several mistakes. Most important, they failed to establish a clear-cut agreement with buyers as to legal and financial responsibilities. Result: the \$120,000 facility was sold to the residents at a loss.

In the next subdivision, Eichler set aside recreational land for homeowners. When they didn't generate the money or motivation to build, he told owners he planned to build on the set-aside land. This moved them to form an association and build their own facilities, but again Eichler suffered some loss of good will in the effort.

Today, at Lucas Valley subdivision in Marin county, Eichler feels he has most of the problems licked. The pool and playground is owned by a not-for-profit corporation

which will turn it over to owners when 60% occupied.

Here are some of Eichler's recommendations to other builders:

1. Never build a recreational facility without a firm statement of ownership and management made absolutely clear to the buyer—not only in advertising and promotion, but in the contract.
2. Don't try to control the show. Homeowners want to feel they are a part of the operation.
3. Complete the pool, park, etc.,—before you start selling homes.
4. Apportion cost of facilities to all homes. Thus, the builder has control of what is built and where it is built. But his buyers are

"Our park and pool added \$500 to the cost of our houses—but gave us the competitive edge."

With an assist from planned-unit development zoning, Dan Bodily developed a 4½-acre park for his 225 Parkmont homeowners in Fremont City, Calif. Through planned-unit zoning, in which common park area may be substituted for normally larger lots required, his land cost for park area was minimized.

Total cost of land, landscaping, playground equipment, pool and dressing room at Parkmont totaled \$120,000. Cost of these improvements averaged out at about \$500

per house which Bodily added to the price of his house with no adverse effect on sales. In fact, he claims, "Building in a relatively raw and young city without established recreational facilities, our 'park' in Parkmont was one of the most important sales tools we had to draw buyers."

At Parkmont, the homeowners association and its not-for-profit corporation was organized immediately by Bodily. The original board of directors consisted of himself,

his attorney and his bookkeeper—with 3-year terms of office stipulated. Last fall the first election of officers came up, and the owners re-elected Bodily and his bookkeeper to new 3-year terms. Each homeowner owns one share of stock in the corporation, and dues for maintenance were set originally at \$30.

Bodily has a warning to other builders, as follows:

"We made one serious mistake. Our articles of incorporation set the level of the assessment fee, but also stipulated that it can be changed only by a unanimous vote of the members. That one word 'unanimous' caused troubles.

"Swimming pools are almost a necessity—they help create the image of quality we want associated with our name," says Harold Moser.

Developer Harold Moser of Naperville, Illinois, has built swimming pools and recreational facilities in two of his Chicago suburban subdivisions.

"The swimming pool is becoming a way of life in the suburbs," according to Moser. "We feel that we have to provide one if we are going to uproot established homeowners and get them to come out

At Saybrook, another subdivision of 265 houses where only one builder, Ralph Smykal, builds only Early American traditional homes, the community club provided by Moser occupies 7 lots and has two tennis courts in addition to the pool and cabana. Here, too, the total cost of facilities came to approximately \$100,000, which is reflected in the lot prices to Smykal.

In Naperville, Moser's name carries an image of quality, stability and dependability. With this to go on, Moser operates both pool clubs himself and intends to do so until

forced to assume responsibility.

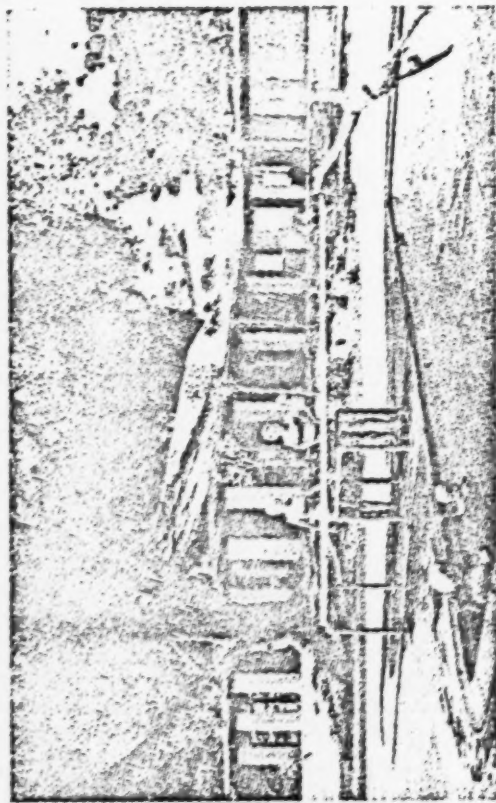
5. Locate the pool or playground in the subdivision area where all model home visitors can see it.

6. Consider building two pools rather than one. They often cost less to build and operate.

Eichler thinks it is feasible to build a pool with as few as 50 homes although 100 to 125 is better. The real criteria is a community need for recreational facilities.

And Eichler sums it up this way:

"Recreational facilities are a form of public relations. Don't defeat your efforts by leaving any area open to misunderstanding. A pool or park looks like a gift. Don't tie it up with strings."



"Over 90% of our members want to see improvements made and other facilities added to the club. We can't do it without money and it only takes one holdout—which we have—to keep that assessment at \$30 forever."

Bodily currently has a proposal for one other subdivision of approximately 600 homes before his planning commission for approval, and his plans for recreational facilities in that development are even more comprehensive. For those 600 houses, the pool will be Olympic-size and the park will include wading pools, tennis courts and playground equipment.

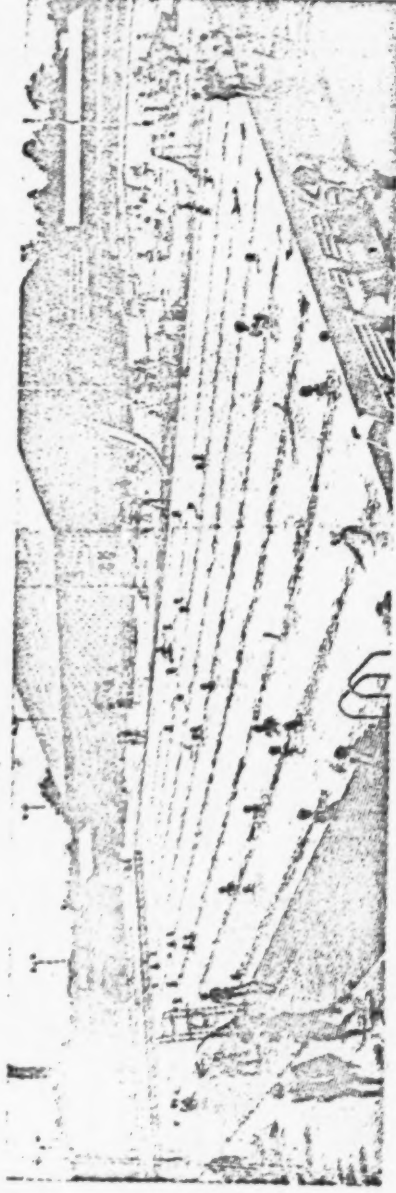


most of the houses are built in each subdivision.

To supplement maintenance income (it costs about \$8,000/year to run each club), he invites non-residents to join on a temporary basis and at a \$10 premium per year for membership.

When resident membership grows to its expected maximum, temporary members will be forced to relinquish their memberships and Moser will deed the swim club over to a not-for-profit corporation formed by the homeowners association in each of the subdivisions.





"We are in the swimming business, and profits are excellent," says Kentucky builder George Martin.

In Louisville, Bollinger & Martin jumped into the pool club business—in a big way. Three of the reasons the operation has been a success: The Plantation Club was carefully planned ahead of time; it is professionally managed; and it provided unduplicated facilities for home buyers in the area.

B & M's Plantation Club is a \$500,000 investment with three pools (one a new \$120,000 indoor-outdoor model), four tennis courts, basketball courts, a softball diamond, picnic grounds, riding stable, and even a club house with ballroom, stage and kitchen. It serves a B&M 200-house subdivision and neighboring areas. Not only has it

appreciated property values, it provides a healthy profit for B&M.

Originally designed for 1,000 families, the club currently has 1,150 members. Its annual gross of about \$140,000 derives mainly from family dues of \$90 per year. With overhead running up to \$90,000 per year, B&M expects to have the outstanding debt completely amortized within 12 years.

"Part of our success," according to George Martin, "can be measured by the fact that another 10 clubs have sprung up in Louisville. We reached a high of 1,500 members when ours was the only club of its kind, but we expect the membership will start climbing back soon."

"Salaries for qualified personnel are our biggest overhead—about 20% of gross income," says Martin, "and we honestly feel that the quality of personnel is all important in this kind of operation."

B&M have gone the homeowner-association pool route, too—a 25 x 75 pool with small club house and dressing room serving only homeowners in its 240-house Upper Highlands subdivision. "Here houses sell in the \$20,000 range and our little pool has been a tremendous asset in selling the subdivision," according to Martin. The pool facilities, which cost about \$35,000, added roughly \$150 to the house price. The pool has been deemed to be a homeowner's association, and is operating successfully on its self-assessed \$50 annual family dues.

FHA answers builders who have claimed "The cost of community recreation facilities won't be reflected in our appraisals."

Last fall a new FHA Land Planning bulletin was published entitled "Planned-Unit Development with a Homes Association."

This bulletin was specifically prepared to cover "privately owned common land comprising a major element of a development such as an internal park network abutting homesites in a superblock or cluster subdivision." But it also was written to set forth design criteria by which FHA appraisers may evaluate community developments with homes association-owned parks and recreational facilities.

When used in preparing a development proposal it is intended to help achieve a development which:

1. Creates a neighborhood of lasting credit to the community,
2. Sustains the values of the properties, and
3. Stimulates successful home sales and resales.

With such a development, the proportionate cost of the common property can be included in the FHA home appraisals as well as the cost of the home property itself, according to FHA's Assistant Commissioner of Technical Standards,

Richard J. Canavan.

But the really comprehensive study on the subject, the Urban Land Institute's new technical bulletin based on a two year study of homes associations, will not be available for several months. This study of what has already been achieved across the country and the needed requirements for future planning, will sell for \$10.

Builders who don't want to wait for publication can order the one available chapter on legal principles and forms for homes associations now. The single chapter costs \$1 and will be issued only to those who place advance orders for the complete bulletin. For further information write to the Urban Land Institute, 1200 18th NW, Washington, D. C. 20036.

FILE COPY

FILED

SUPREME COURT OF THE UNITED STATES

ORDINARY TERM, 1961

No. ~~223~~ 33

PAUL E. SULLIVAN, et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

T. R. FREEMAN, JR., et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

**PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF VIRGINIA**

Allison W. Brown, Jr.
Suite 501, 1424-16th Street, N.W.
Washington, D.C. 20006

Peter Alfred Swales
217 Fifth Street, N.E.
Washington, D.C. 20003

Robert M. Alexander
2011 E. Glade Road
Arlington, Virginia 22204
Attorneys for Petitioners

Jack Greenberg
James M. Nabrit, III
10 Columbia Circle
New York, New York 10019
Counsel

INDEX

PRIOR OPINIONS	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTORY AND CONSTITUTIONAL PROVISIONS	3
STATEMENT	4
A. Introduction	4
B. Little Hunting Park, Inc. - Its purpose and manner of operation	6
C. The corporation's directors refuse to approve the assign- ment of Paul E. Sullivan's share because the assignee, Dr. T. R. Freeman, Jr., and his family are Negroes	8
D. The corporation's directors expel Paul E. Sullivan be- cause of his criticism of their refusal to approve the assignment of his share to Dr. T. R. Freeman, Jr. on the basis of race	9
E. Relief sought	11
REASONS FOR GRANTING THE WRIT	13
CONCLUSION	27

CITATIONS

CASES:

Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc., 391 U.S. 308	17, 21
Bacigalupo v. Fleming, 199 Va. 827, 102 S.E.2d 321	25, 26
Baird v. Tyler, 185 Va. 601, 39 S.E.2d 642	15
Barrows v. Jackson, 346 U.S. 249	16, 17, 20, 23
Bell v. Maryland, 378 U.S. 226	20, 21
Bernstein v. Alameda-Contra Costa Medical Ass'n, 139 Cal. App. 2d 241, 293 P.2d 862	16
Buchanan v. Warley, 245 U.S. 60	20
Callender v. Florida, 383 U.S. 270	27

(ii)

Callender v. Florida, 380 U.S. 519	27
Clifton v. Puente, 218 S.W.2d 272 (Tex. Civ. App.)	21
Cook v. Virginia Holsum Bakeries, Inc., 207 Va. 815, 153 S.E.2d 209	26
Crossen v. Duffy, 90 Ohio App. 252, 103 N.E.2d 769	21
Curtis Publishing Co. v. Butts, 388 U.S. 130	12, 23
Daniel v. Paul, No. 488, certiorari granted, Dec. 9, 1968	14
Edwards v. Habib, 397 F.2d 687 (C.A.D.C.)	16
Evans v. Newton, 382 U.S. 296	17, 18, 19
Fay v. Noia, 372 U.S. 391	28
Gallagher v. American Legion, 154 Misc. 281, 277 N.Y.S. 81, aff'd, 242 App. Div. 604, 271 N.Y.S. 1012	22
Gibbons v. Ogden, 9 Wheat. 1	28
Grimes v. Crouch, 175 Va. 126, 7 S.E.2d 115	26, 27
Harris v. Sunset Island Property Owners, Inc., 116 So.2d 622 (Fla.)	15
Hurwitz v. Directors Guild of America, 364 F.2d 67 (C.A. 2), certiorari denied, 385 U.S. 971	22
Hyde v. Woods, 94 U.S. 523	15
Hyson v. Dodge, 198 Va. 792, 96 S.E.2d 792	25
Jones v. Alfred H. Mayer Co., 392 U.S. 409	5, 12, 13, 14, 15
Kornegay v. City of Richmond, 185 Va. 1013, 41 S.E.2d 45	25, 26
Kreshik v. St. Nicholas Cathedral, 363 U.S. 190	28
Lauderbaugh v. Williams, 409 Pa. 351, 186 A.2d 39	15
Madden v. Atkins, 4 N.Y.2d 283, 151 N.E.2d 73	22
Malibou Lake Mountain Club v. Robertson, 219 Cal. App. 2d 181, 33 Cal. Rptr. 74	16
Marsh v. Alabama, 326 U.S. 501	17, 21
Martin v. Hunter's Lessee, 1 Wheat. 304	13, 28
McCulloch v. Maryland, 4 Wheat. 316	28
Mitchell v. International Ass'n of Machinists, 196 Cal. App. 2d 796, 16 Cal. Rptr. 813	21, 22

(iii)

Mountain Springs Ass'n v. Wilson, 81 N.J. Super. 564, 196 A.2d 270	15
Mulkey v. Reitman, 64 Cal. 2d 529, 413 P.2d 825, aff'd, 387 U.S. 369	19
N.A.A.C.P. v. Alabama, 377 U.S. 288	5
N.A.A.C.P. v. Alabama, 360 U.S. 240	13
N.A.A.C.P. v. Alabama, 357 U.S. 449	5
Naim v. Naim, 350 U.S. 985	27
National Labor Relations Board v. Industrial Union of Marine and Shipbuilding Workers, 391 U.S. 418	16
Nesmith v. Young Men's Christian Ass'n of Raleigh, N.C., 397 F.2d 96 (C.A. 4)	18
New York Times Co. v. Sullivan, 376 U.S. 254	23
Page v. Edmunds, 187 U.S. 596	15
Parrot v. City of Tallahassee, 381 U.S. 129	5
Pickering v. Board of Education, 391 U.S. 563	21, 23
Public Utilities Comm'n v. Pollack, 343 U.S. 451	17
Reitman v. Mulkey, 387 U.S. 369	20, 23
Rice v. Sioux City Memorial Cemetery, 349 U.S. 70	21
Rockefeller Center Luncheon Club, Inc. v. Johnson, 131 F. Supp. 703 (S.D. N.Y.)	18
Shelley v. Kraemer, 334 U.S. 1	15, 20
Shuttlesworth v. City of Birmingham, 376 U.S. 339	27
Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (C.A. 4), certiorari denied, 376 U.S. 938	17
Snead v. Commonwealth, 200 Va. 850, 108 S.E.2d 399	27
Spayd v. Ringing Rock Lodge No. 665, 270 Pa. 67, 113 Atl. 70	16
Spencer v. Flint Memorial Park Ass'n, 4 Mich. App. 157, 144 N.W.2d 622	21
Stanley v. Schwalby, 162 U.S. 255	28
State ex rel. Waring v. Georgia Medical Society, 30 Ga. 608 ...	16
Staub v. City of Baxley, 355 U.S. 313	5

Stokely v. Owens, 189 Va. 248, 52 S.E.2d 164	26
Sullivan v. Little Hunting Park, Inc., 392 U.S. 657	2, 5
Sullivan v. Little Hunting Park, Inc., ____ Va. ____, 163 S.E. 2d 588	2
Sullivan v. Little Hunting Park, Inc., 12 Race Rel. L. Rep. 1008	2
Taylor v. Wood, 201 Va. 615, 112 S.E.2d 907	26, 27
Terry v. Adams, 345 U.S. 461	17
Thompson v. Grand International Brotherhood of Locomo- tive Engineers, 41 Tex. Civ. App. 176, 91 S.W. 834	16
Town of Falls Church v. Myers, 187 Va. 110, 46 S.E.2d 31	26
Tuckerton Beach Club v. Bender, 91 N.J. Super. 167, 219 A.2d 529	15
Tyler v. Magwire, 17 Wall. 253	13, 28
United States v. Richberg, 398 F.2d 523 (C.A. 5)	18
Ward v. Board of County Comm'rs, 253 U.S. 17	27
Williams v. Bruffy, 12 Otto 248	28
Williams v. Georgia, 349 U.S. 375	27

CONSTITUTIONAL AND STATUTORY PROVISIONS:

Article VI of the Constitution	3, 13
First Amendment to the Constitution	3, 11, 13, 21, 22
Thirteenth Amendment to the Constitution	3, 11, 14
Fourteenth Amendment to the Constitution	3, 11, 12, 13
Civil Rights Act of 1866 (14 Stat. 27):	
42 U.S.C. § 1981	2, 3, 11, 14, 15, 16, 17
42 U.S.C. § 1982	2, 3, 11, 14, 15, 17
28 U.S.C. § 1257(3)	2
28 U.S.C. § 1651(a)	28
28 U.S.C. § 2106	28
Code of Virginia, 1950 (1949 ed.), § 13-220	6
Rules of the Supreme Court of Appeals of Virginia, Rule 5:1, § 3(f), 2 Code of Virginia, 1950 (1957 Replace. Vol.) 602	4, 5 25, 26

MISCELLANEOUS:

Practical Builder, Vol. 29, No. 2 (February 1964)	19
Urban Land Institute, Open Space Communities in the Mar- ket Place (Tech. Bulletin 57, 1966).	18
Washington Post (June 12, 1967)	19

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No.

PAUL E. SULLIVAN, et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

T. R. FREEMAN, JR., et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF VIRGINIA

Petitioners pray that a writ of certiorari issue to review the decision of the Supreme Court of Appeals of Virginia entered October 14, 1968, in these two related cases.¹

¹Petitioners in the *Sullivan* case, in addition to Paul E. Sullivan, are Flora L. Sullivan, his wife, and their seven minor children, William F. Sullivan, Graciela P. Sullivan, Ana I. Sullivan, Maire Sullivan, M. Dolores Sullivan, M. Monica Sullivan, and Brigid Sullivan, who sued by and through Paul E. Sullivan, their father and next friend. In the *Freeman* case the petitioners, in addition to T. R. Freeman, Jr., are Laura Freeman, his wife, and their two minor children, Dale C. Freeman and Dwayne L. Freeman, who sued by and through T. R. Freeman, Jr., their father and next friend. Respondents in both cases, in addition to Little Hunting Park, Inc., are Mrs. Virginia Moore, Ronald L. Arnette, S. Leroy Lennon, Raymond R. Riesgo, Mrs. Marjorie Madsen, William J. Donohoe, Oskar W. Egger, and Milton W. Johnson, individuals who were directors of said corporation at times material herein.

PRIOR OPINIONS

This Court's earlier *per curiam* opinion remanding these cases to the Supreme Court of Appeals of Virginia is reported at 392 U.S. 657, and is printed in Appendix B hereto, *infra*, p. 32. The opinion of the Supreme Court of Appeals of Virginia subsequent to the order of remand is reported at 163 S.E.2d 588, and is printed in Appendix B hereto, *infra*, pp. 33-35. The memorandum orders of the Supreme Court of Appeals of Virginia rejecting the appeals from the trial court are not reported and are printed in Appendix B hereto, *infra*, pp. 36-37. The decision of the trial court in the *Sullivan* case was contained in a letter to the parties dated April 7, 1967, which is reported at 12 Race Rel. L. Rep. 1008, and the decree was entered April 12, 1967; they are printed in Appendix B hereto, *infra*, pp. 38-41. The trial court's decision in the *Freeman* case was contained in a letter dated April 21, 1967, which is not reported, and the decree was entered May 8, 1967; they are printed in Appendix B hereto, *infra*, pp. 42-44.

JURISDICTION

The decision of the Supreme Court of Appeals of Virginia was rendered on October 14, 1968. The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether the Supreme Court of Appeals of Virginia properly relied upon a non-federal procedural ground as the sole basis for refusing to accept the remand of this Court after this Court had held that such ground was inadequate to bar consideration of the federal questions presented by this case.

2. Whether the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1982) which guarantees Negroes the same rights as are enjoyed by white persons to make and enforce contracts

and to lease and hold property is violated when a Negro, because of his race, is not permitted by the board of directors of a community recreation association to use a membership share which has been assigned to him by his landlord as part of the leasehold estate.

3. Whether a landlord who is expelled from a community recreation association because he voices disagreement with the directors' racially motivated refusal to approve his assignment of a share in the association to his Negro tenant may obtain relief from the association's retaliatory action under the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1982).

4. Whether the Fourteenth Amendment to the Constitution of the United States is violated by a community recreation association when it excludes from its facilities on the basis of his race, a person who is otherwise eligible to use them, and by a state court in sanctioning the exclusion.

5. Whether the free speech protections of the First and Fourteenth Amendments to the Constitution of the United States are violated by a community recreation association when it expels a shareholder for dissenting from its discriminatory racial policy, and by a state court in sanctioning the expulsion.

STATUTORY AND CONSTITUTIONAL PROVISIONS

The statutory provisions involved are 42 U.S.C. §§ 1981 and 1982. The provisions of the Constitution of the United States involved are Article VI, the First Amendment, the Thirteenth Amendment and the Fourteenth Amendment, Section 1. The foregoing provisions are set forth in Appendix A, *infra*, pp. 29-30.

STATEMENT

A. Introduction

Briefly, respondent Little Hunting Park, Inc. is a Virginia non-stock corporation organized for the purpose of operating a community park and swimming pool for the benefit of residents of certain housing subdivisions in Fairfax County, Virginia. A person who owns a membership share entitling him to use the association's facilities is permitted under the corporate by-laws, in the event he rents his house to another, to assign the share to his tenant, subject to approval by the board of directors. In the instant case the directors refused to approve such an assignment from Paul E. Sullivan to Dr. T. R. Freeman, Jr., solely on the ground that Freeman and the members of his family are Negroes. When Sullivan protested the directors' discriminatory racial policy and sought to reverse their refusal to approve the assignment, they expelled him.

Petitioners sued separately in the state court challenging on federal, as well as state, grounds the racial restriction imposed by the directors on the assignment of the share in the association, and asserting the unlawfulness of Sullivan's expulsion; injunctive relief and monetary damages were sought. Following trials, the lower court dismissed the complaints holding that the corporation is a "private social club" with authority to determine the qualifications of those using its facilities, including the right to deny such use on the basis of race. The court also held that the corporation's expulsion of Sullivan was permitted by its by-laws and was justified by the evidence. Petitions for appeal were thereafter submitted to the Supreme Court of Appeals of Virginia, which were rejected by that court for the stated reasons that petitioners had failed to comply with a procedural rule of that court.²

²The Virginia court, citing its Rule 5:1, Sec. 3(f), (Appendix A, *infra*, pp. 30-31), stated that the appeals were "not perfected in the manner provided by law in that opposing counsel was not given reasonable

In their petition for a writ of certiorari filed in this Court on March 1, 1968, petitioners contended that the Virginia court's application of its procedural rule to bar the appeals was arbitrary and unreasonable—warranted neither by the facts nor the court's prior construction of its procedural rule. Accordingly, petitioners asserted that in view of the claimed violations of their federally protected rights, the procedural ground on which state court based its decision should be examined to determine its adequacy to bar review by this Court.³

This Court in a *per curiam* opinion rendered June 17, 1968, stated (392 U.S. 657):

The petition for a writ of certiorari is granted and the judgment is vacated. The case is remanded to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409.

The order of remand was thereafter received by the Supreme Court of Appeals of Virginia, and on October 14,

written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it." The rule referred to provides that as part of the procedure for certifying a record for appeal the reporter's transcript must be tendered to the trial judge within 60 days and signed at the end by him within 70 days after final judgment. The rule also states: "Counsel tendering the transcript . . . shall give opposing counsel reasonable written notice of the time and place of tendering it and a reasonable opportunity to examine the original or a true copy of it." 2 Code of Virginia, 1950 (1957 Replace. Vol. 602.

³Citing *Parrot v. City of Tallahassee*, 381 U.S. 129; *N.A.A.C.P. v. Alabama*, 377 U.S. 288, 297; *Staub v. City of Baxley*, 355 U.S. 313, 318-320; *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 454-458. In their petition for certiorari, petitioners related in detail the steps they had gone through to comply with the state court's procedural rule, and showed how they had in fact complied with it in both substance and form, on the basis of the state court's prior construction of its rule. (For the convenience of the Court, the relevant facts and authorities relied on by petitioners in support of their contention are repeated *infra*, pp. 23-27.) The opposition to the petition for certiorari filed by respondents was based exclusively on the procedural issue.

1968, that court issued an opinion declaring its refusal to accept the remand. The court cited as its reason the same ground originally given for refusing to hear the cases, i.e., petitioners, asserted failure to perfect their appeals from the trial court because of noncompliance with the procedural rule.

In view of the unavailability of the state court as a forum for consideration of the asserted violations to the petitioners' federally protected rights, petitioners now appeal to this Court for a second time, and respectfully urge it to consider the merits of the significant questions presented herein.

B. Little Hunting Park, Inc.—Its purpose and manner of operation

Little Hunting Park, Inc. was incorporated in 1954 under the Virginia Non-Stock Corporation Law⁴ for the purpose, as set forth in its certificate of incorporation, of organizing and maintaining "a community park and playground facilities" for "community recreation purposes" (T. 184-185).⁵ Pursuant to this object, the corporation owns land on which it has built and operates a swimming pool, tennis courts and other recreation facilities for the benefit of residents of specified subdivisions and certain adjacent neighborhoods in Fairfax County, Virginia (T. 186, 228). The corporation's by-laws provide that shares may be purchased by adult persons who "reside in, or who own, or who have owned housing units" in one of the specified subdivisions (T. 186). A share entitles all persons in the immediate family of the shareholder to use the corporation's recreation facilities (T. 186-187).

The by-laws limit the number of shares in the corporation to 600 (T. 186). There is no limitation, however, on

⁴§ 13-220, Code of Virginia, 1950 (1949 ed.).

⁵"T." refers to the transcript in the *Sullivan* case. "F.T." refers to the *Freeman* transcript.

the number of shares that an individual may own, and it is not unusual for a person owning more than one house in the neighborhood served by Little Hunting Park pool to own a separate share for the use of the family occupying each house (T. 9, 189-190). Shares may also be purchased by institutions and corporations owning property in the area where the swimming pool is located. Thus, a share is owned by a church located in the neighborhood, and shares have been owned by two real estate companies that built and marketed the houses in Bucknell Manor and Beacon Manor, subdivisions served by Little Hunting Park. These two corporations have, at various times, owned at least 25 shares which they have retained for periods ranging from 5 to 7 years (F.T. 42-44).

The right to use Little Hunting Park's facilities may be acquired by purchase or by temporary assignment of a corporate share. The share may be purchased directly from the corporation, from any shareholder, or, upon buying a house in the community, from the vendor as part of the consideration for the purchase price of the house (T. 9, 187-189). A person residing within one of the subdivisions served by Little Hunting Park may obtain temporary assignment of a share; however, an assignment may only be made from landlord to tenant. (T. 187, 200).⁶

The corporation's by-laws have always provided that the issuance and assignment of shares are subject to the approval of the board of directors (T. 15, 192, 251-252). There were 1,183 shares issued and 322 shares assigned during the period from 1955 through 1966, the first 12 years of the corporation's existence (T. 192-193, 196-197). However, with the exception of the assignment described below to Dr. T. R. Freeman, Jr., there is no record of any assignment ever being denied approval by the directors (T. 199). One

⁶Regardless of whether the swimming pool and park facilities are used by the shareholder or assignee, the owner of a share is obligated to pay an annual assessment in order to keep his share valid. (T. 9-10, 199-200).

applicant for the purchase of a share was disapproved during that period, but there is no evidence that this was other than because of the individual's failure to satisfy the geographic residence requirement of the by-laws (T. 198-199).

- C. The corporation's directors refuse to approve the assignment of Paul E. Sullivan's share because the assignee, Dr. T. R. Freeman, Jr., and his family, are Negroes.

From December 1950 to March 1962, Paul E. Sullivan and his family lived in a house which Sullivan owned and continues to own on Quander Road in the Bucknell Manor subdivision (T. 7). In May 1955, shortly after Little Hunting Park, Inc. was organized, Sullivan purchased a share, No. 290, for \$150 (T. 7-8). In March 1962, Sullivan and his family moved a short distance to another house that Sullivan purchased located on Coventry Road in the White Oaks subdivision where, as part of the purchase price for the property, Sullivan acquired a second share from the seller of the house. Share No. 925 was thereafter issued to Sullivan by the corporation (T. 8-9, 66-67). After moving to Coventry Road, Sullivan continued paying the annual assessments on shares Nos. 290 and 925, and leased his house on Quander Road to various tenants. In consideration of the rent, he assigned share No. 290 as part of the leasehold interest (T. 9-10, 12, 14-16). Sullivan testified that the lease arrangement was a "package deal . . . the house, the yard, and the pool share" (T. 10).

On February 1, 1965, Sullivan leased the Quander Road premises for a term of one year to Dr. T. R. Freeman, Jr. at a rent of \$1,548, payable in monthly installments of \$129 (T. 10-11). The deed of lease described the property demised as "the dwelling located at 6810 Quander Road, Bucknell Manor, Alexandria, Virginia 22306, and Little Hunting Park, Inc. pool share No. 290" (T. 11). The lease was extended in identical terms as of February 1, 1966, and February 1, 1967 (T. 10-11). Dr. Freeman met all of the

eligibility requirements for an assignee of a share in the corporation, since he is an adult, and the house that he leased from Sullivan is in Bucknell Manor subdivision (T. 204-205). Freeman has no disqualifications; he is an agricultural economist with a Ph.D. degree from the University of Wisconsin, and at the time of the events herein was employed by the Foreign Agriculture Division of the United States Department of Agriculture (T. 176-177). He also holds the rank of Captain in the District of Columbia National Guard (T. 177). Dr. Freeman and his wife and children are Negroes (T. 178).

In April 1965, Paul E. Sullivan paid the annual assessment of \$37 on share No. 290 and, pursuant to his obligation contained in the lease on the Quander Road property, completed the form prescribed by the corporation affirming that Dr. Freeman was his tenant and therefore eligible to receive the assignment of that share (T. 11-12). Additionally, Dr. Freeman supplied certain information and signed the form, thereby doing everything required by the corporation to qualify as an assignee of the share (T. 12). However, the board of directors of the corporation, meeting on May 18, 1965, refused to approve the assignment of share No. 290 to Dr. Freeman, because he and the members of his family are Negroes (T. 13, 17-18, 164, 204-205, 239-240, 281). On May 25, 1965, Sullivan received a letter from S. L. Lennon, the corporation's membership chairman, notifying him that his assignment of share No. 290 to Dr. Freeman had been denied approval by the board of directors; no reason was given (T. 13).

- D. The corporation's directors expel Paul E. Sullivan because of his criticism of their refusal to approve the assignment of his share to Dr. T. R. Freeman, Jr. on the basis of race.**

Sullivan, upon learning of the directors' disapproval of his assignment to Dr. Freeman, sought further information concerning their action (T. 13-14, 16). In response to his

inquiry, a delegation from the board—membership chairman S. L. Lennon, John R. Hanley, a former president and director of the corporation, and Oskar W. Egger, a director—visited Mr. and Mrs. Sullivan at their home on May 28, 1965, and admitted that Dr. Freeman had been rejected solely because of his race (T. 16-18, 163-164, 250, 259, 278, 281). To Sullivan, this action was shocking, and as a matter of his religious teaching and conviction, immoral; he so informed the delegation. Furthermore, as a resident of the neighborhood for many years and as a member of Little Hunting Park, Inc. since its inception, he could not believe their assertion that the board's action reflected the unanimous view of the members of the corporation (T. 19, 22, 164). Nor could Sullivan in good conscience accept the board's offer to purchase share No. 290 which he had contracted to assign to Dr. Freeman (T. 18-19).

Following this meeting, Sullivan and Dr. Freeman, who was also his fellow parishioner, sought the advice of their priest, Father Walsh, who suggested that the board might reconsider its action if the directors had an opportunity to meet with Dr. Freeman and consider his case on its merits (T. 26). The suggestion that such a meeting be held was rebuffed, however, by Mrs. Moore, the corporation's president, when Sullivan spoke to her on June 9 (T. 28-29, 165). At about the same time, Sullivan spoke with several other shareholders, who, upon learning of the board's action, wrote letters to President Moore in which they expressed their strong disagreement with the board's action in disapproving Dr. Freeman (T. 217-223). After receipt of these letters, the board met on June 11, and decided that there appeared to be "due cause" for Sullivan's expulsion from the corporation because of his "non-acceptance of the Board's decision" on the assignment of his share "along with the continued harassment of the board members, etc." (T. 29-31, 204, 220).⁷

⁷The sole ground for expulsion provided under the corporate by-laws is for conduct "inimicable [sic] to the corporation's members." Article III, Section 6(b). The board purported to act under this section in expelling Sullivan (T. 29-31, 206-207).

Sullivan was told of the board's action in a letter from President Moore dated July 7, 1965, which also informed him that he would be given a "hearing" by the directors on July 20, 1965 (T. 29-31, 206). Because the directors refused to postpone the hearing in order that Sullivan's attorney could appear with him, and because they refused to provide Sullivan with a statement of the conduct alleged to constitute the basis for his expulsion, Sullivan was compelled to commence a civil action in the Circuit Court of Fairfax County (T. 52-53). Settlement of the action was reached upon the corporation's agreeing to postpone the hearing to August 17, 1965, and to furnish a detailed statement of the charges against him (T. 53). A statement specifying the alleged grounds for Sullivan's expulsion was thereafter furnished to him (T. 20-21).

At the "hearing" held by the directors on August 17, no evidence was introduced in support of any of the allegations against Sullivan, and he was not permitted to learn the identity of the persons making charges against him, nor to question them. He was also denied permission to have a reporter present to transcribe the proceeding. He had only the opportunity to present evidence concerning the charges as he understood them, and to state his views (T. 45-46, 53-55, 62-63, 129-130, 131, 286-287, 289). On August 24, 1965, the board met, and unanimously voted to expel Sullivan (T. 228). By letter of August 27, 1965, Sullivan was notified by President Moore of his expulsion, and he was tendered the then current "sale price" of his two shares, plus prorated annual assessments on the two shares, the total amounting to \$399.34 (T. 55, 173-174).

E. Relief sought

Petitioners seek injunctive relief and monetary damages under the Civil Rights Act of 1866 (14 Stat. 27, 42 U.S.C. §§ 1981 and 1982), as well as under the First, Thirteenth and Fourteenth Amendments. However, since the petitioners in the *Freeman* case no longer reside in the area served

by Little Hunting Park, Inc., their claim is now limited solely to compensatory and punitive damages, pursuant to the allegations of their complaint, as the result of having been denied access for 2 years to the community recreation facilities operated by the association.⁸ Petitioners in the *Sullivan* case seek an order compelling full reinstatement of Paul E. Sullivan in Little Hunting Park, Inc. and reinstatement of shares Nos. 290 and 925. They also seek compensatory and punitive damages from respondents for Paul E. Sullivan's wrongful expulsion from the association and the denial to them of the use of its facilities.

The federal statutory questions involved here were the basis for the Court's remand of this case to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Alfred H. Mayer Co.* Petitioners have also relied throughout the proceeding on the Fourteenth Amendment, asserting that Little Hunting Park, Inc., by its operation of a community park and recreation facility, exercises a public function and hence is prohibited by the Equal Protection clause from denying persons the use of its facilities on the basis of race (*Freeman* memorandum to trial court in opposition to demurrer, pp. 22-23). Petitioners have further contended that their rights under the Fourteenth Amendment are violated by the state court's giving validity to the racial restriction imposed by respondents on the Little Hunting Park facilities (*Sullivan* and *Freeman* complaints). Finally, petitioner Paul E. Sullivan contended at the trial that his expulsion from the association because of his dissent from its racial policy violated his constitutional right of free speech (T. 224-245). In his petition for appeal, Sullivan further contended on the basis of *Curtis Publishing Co. v. Butts*, 388 U.S. 130, which had been decided in the interim between the trial and the filing of the appeal, that

⁸In June 1967, Dr. Freeman and the members of his family left the United States, and they currently reside in Pakistan where Dr. Freeman is Assistant Agricultural Attache in the United States Embassy.

the directors of Little Hunting Park, Inc. were "public figures" in the community within the meaning of that case. Hence, it was asserted that the court could not under the First and Fourteenth Amendments apply state law to "sanction or recognize as valid the directors' action in expelling Sullivan from the association merely because he exercised his right to speak out critically concerning their discriminatory racial policy" (*Sullivan* petition for appeal, p. 34).

REASONS FOR GRANTING THE WRIT

1. The Court, by granting certiorari in this proceeding in the first instance, impliedly held that the non-federal ground on which the Supreme Court of Appeals of Virginia rejected the appeals in these cases was inadequate to bar consideration of the federal questions involved. Upon remand, however, the Virginia court adhered to its prior holding, again asserting that because the procedural rule had not been complied with, the cases were not properly before it. The court, therefore, refused to consider the issues on the merits in light of *Jones v. Alfred H. Mayer Co.*, as required by this Court's mandate.

The refusal by the Supreme Court of Appeals of Virginia to comply with this Court's order of remand is itself compelling reason for the Court to grant certiorari in this case. By its action, the state court has disregarded its duty under the Supremacy Clause, and for this Court to allow this extraordinary conduct to pass without notice can only be detrimental to our system of government. *Martin v. Hunter's Lessee*, 1 Wheat. 304.⁹

2. Certiorari should be granted to determine whether petitioners have been denied rights guaranteed to them by

⁹Petitioners assume that this Court's holding that the state ground of decision is inadequate to bar review of the federal questions is not now subject to reexamination by the Court. *Tyler v. Magwire*, 17 Wall. 253, 283-284; *N.A.A.C.P. v. Alabama*, 360 U.S. 240, 245, and cases cited.

the Thirteenth Amendment and 42 U.S.C. §§ 1981, 1982 (Civil Rights Act of 1866, 14 Stat. 27).¹⁰

Last Term, in *Jones v. Alfred H. Mayer Co.*, *supra*, the Court held that 42 U.S.C. § 1982, which was part of § 1 of the Civil Rights Act of 1866 "bars *all* racial discrimination, private as well as public, in the sale or rental of property, and that the statute, thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment." 392 U.S. at 413 (emphasis in original). The Court in the *Jones* case did not specifically consider 42 U.S.C. § 1981. However, since that section also originated in § 1 of the Act of 1866, the Court by implication held that § 1981 similarly "bars *all* racial discrimination, private as well as public," insofar as it affects the right of Negroes, *inter alia*, "to make and enforce contracts." 392 U.S. at 413, 441-442 n. 78.

The complaint in the *Freeman* case embodied two causes of action: one alleging wrongful interference by respondents with performance of the deed of lease between Sullivan and Freeman, and the other asserting wrongful deprivation by respondents of Freeman's full use and enjoyment of the leasehold estate demised to Freeman under the deed of lease. By disapproving the assignment of share No. 290 to Freeman and thus preventing performance of the contract between Sullivan and Freeman solely because of the latter's race, respondents violated Freeman's right guaranteed by § 1981 to make and enforce contracts under the same conditions as white persons. Freeman's rights guaranteed him by § 1982 were also violated by respondents. Thus, since share No. 290 was an integral part of the leasehold estate conveyed from Sullivan to Freeman and represented part of the value for which Freeman paid the rent specified in the

¹⁰The provisions of 42 U.S.C. §§ 1981, 1982 are also at issue in *Daniel v. Paul*, No. 488, October Term 1968, certiorari granted December 9, 1968. The Court's concurrent consideration of the *Daniel* case and the one at bar would be beneficial from the standpoint of clarifying the scope and effect of these statutory provisions.

lease, respondents' refusal to approve the assignment violated Freeman's right under that section to lease and hold real property without restriction on account of his race. Further, the membership share in Little Hunting Park, Inc., a non-stock corporation, in itself constitutes personal property and hence comes within the terms of § 1982. *Hyde v. Woods*, 94 U.S. 523; *Page v. Edmunds*, 187 U.S. 596; *Baird v. Tyler*, 185 Va. 601, 39 S.E.2d 642, 645-646. It is clear, therefore, that the Freemans have been deprived of rights falling squarely within the ambit of §§ 1981 and 1982 if the statute "means what it says." *Jones, supra*, 392 U.S. at 421.

In dismissing Freeman's complaint, the trial court relied on the provision of the corporation's by-laws which conditioned Sullivan's assignment of share No. 290 on the approval of the board of directors. In this respect, the situation here is no different than in *Shelley v. Kraemer*, 334 U.S. 1, where the property owner similarly did not have an unlimited right to transfer his property. It too was subject to a racially restrictive covenant which was a "condition precedent" to the right of sale. 334 U.S. at 4. The exercise, therefore, by the board of directors of its "right" to approve assignments and determine membership eligibility on the basis of race amounts to nothing less than the explicit racial covenant in *Shelley*. Thus, whether expressly denominated a racial covenant or a right of approval is of no moment;¹¹ it remains a racial restriction on the use or transfer of property and hence is invalid under the 1866 statute.

3. As well as creating rights for Negroes to be free from discriminatory treatment, 42 U.S.C. §§ 1981 and 1982 impose correlative obligations on persons not to deal discriminatorily

¹¹ *Lauderbaugh v. Williams*, 409 Pa. 351, 186 A.2d 39; *Mountain Springs Ass'n v. Wilson*, 81 N.J. Super. 564, 196 A.2d 270, 275-277; *Tuckerton Beach Club v. Bender*, 91 N.J. Super. 167, 219 A.2d 529; and see *Harris v. Sunset Islands Property Owners, Inc.*, 116 So. 2d 622 (Fla.).

with Negroes. Thus, if Sullivan had refused to assign share No. 290 to Freeman because of the latter's race he would have violated the statute.

Sullivan was expelled from the corporation, and his two shares were revoked, however, as a direct result of his having dealt with Freeman, as the statute requires, on a non-discriminatory basis, and because he sought to reverse the directors' discriminatory refusal to approve the assignment in order that he could perform his obligation to Freeman under their contract.¹² The expulsion was unquestionably retaliatory, and as "a matter of statutory construction and for reasons of public policy . . . cannot be permitted." *Edwards v. Habib*, 397 F.2d 687, 699 (C.A.D.C.), and cases cited at n. 38. Sullivan "was expelled from the association for doing that which the law . . . not only authorizes but encourages." *State ex rel. Waring v. Georgia Medical Society*, 30 Ga. 608, 629. The action was therefore contrary to public policy and he is entitled to reinstatement. *Ibid.* Accord: *Malibou Lake Mountain Club v. Robertson*, 219 Cal. App. 2d 181, 33 Cal. Rptr. 74, 77; *Spayd v. Ringing Rock Lodge No. 665*, 270 Pa. 67, 113 A.H. 70; *Bernstein v. Alameda-Contra Costa Medical Ass'n*, 139 Cal. App. 2d 241, 293 P.2d 862, 865; *Thompson v. Grand International Brotherhood of Locomotive Engineers*, 41 Tex. Civ. App. 176, 91 S.W. 834, 838. Cf. *National Labor Relations Board v. Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418, 424-425.

Furthermore, the Court recognized in *Barrows v. Jackson*, 346 U.S. 249, that to sanction "punishment" of a person because he has refused to discriminate would be to render nugatory the rights of Negroes to be free from discrimination. As the Court stated there, "The law will permit respondent to resist any effort to compel her to observe

¹²Sullivan's membership in the association, including his right to assign his share, was also based on a contract in the form of the corporate by-laws. The directors' invocation of this contract to disapprove the assignment of Sullivan's share to Freeman on racial grounds thus independently violated 42 U.S.C. § 1981, a matter which only Sullivan, who was bound by the by-laws, was in a position to protest.

such a covenant . . . since she is the only one in whose charge and keeping reposes the power to continue to use her property to discriminate or to discontinue such use " 346 U.S. at 259. Similarly here, for the law to sanction Sullivan's punishment by expulsion because of his refusal to discriminate would render Freeman's rights under §§ 1981 and 1982 illusory, indeed.¹³

4. In addition to the statutory grounds for reversal of the court below, there are compelling constitutional reasons why its decision should not stand. It is well recognized that where facilities are built and operated primarily for public benefit and their operation is essentially a public function, they are subject to the limitations to which the State is subject and cannot be operated in disregard of the Constitution. *Evans v. Newton*, 382 U.S. 296; *Marsh v. Alabama*, 326 U.S. 501; *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308.¹⁴ The record here shows that Little Hunting Park, like Baconfield Park which was the subject of *Evans v. Newton*, performs the public function of providing recreation for members of the community and, accordingly may not be operated on a racially discriminatory basis. Respondent association was organized and incorporated for the express purpose, as stated in its certificate of incorporation, of operating "a community park and playground facilities" for "community recreation purposes" (T. 124-125). Pursuant to this object, it operated its park and swimming pool for 11 years, making its facilities open to everyone who lived in the geographic area defined in the by-laws. Consistent with

¹³ Although the statute declares the rights of Negroes not to be discriminated against, Sullivan, a Caucasian, has standing to rely on the invasion of the rights of others, since he is "the only effective adversary" capable of vindicating them in litigation arising from his expulsion. *Barrows, supra*, 346 U.S. at 259.

¹⁴ Accord: *Terry v. Adams*, 345 U.S. 461; *Public Utilities Comm'n v. Pollack*, 343 U.S. 451; *Simkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959, 968 (C.A. 4), certiorari denied, 376 U.S. 932.

its stated purpose, the corporation never pursued a policy of exclusiveness. It was not until 1965, when Freeman was disapproved, that there was a departure from the corporate purpose, making the park available to everyone in the community, except Negroes.¹⁵

The impact on the community of the racial policy here is even greater than it was in *Evans v. Newton*. For, rather than being a mere prohibition against the use of a public recreation facility by Negroes, Little Hunting Park possesses the power to significantly affect the racial composition of the community which it serves.

There can be little doubt that the availability of a community swimming pool and recreation facility is a major factor enhancing the desirability and value of residential property.¹⁶ The real estate advertisements in any metropol-

¹⁵The trial court's finding that Little Hunting Park is a "private social club" is neither supported by the record nor dispositive of the issues in this case. As in the cases just cited, "private" ownership is not determinative if the entity performs a public function. Unlike a conventional private club, membership in Little Hunting Park, Inc. is not personal to the individual; rather, multiple memberships for investment purposes are permitted and may be held by corporate bodies as well as individuals. Further, the corporation has never exercised any policy of genuine selectivity in passing on applicants for membership and assignment. The sole requirement for membership specified by its charter and by-laws is residence within a specified geographical area; within that area, it "is open to every white person, there being no selective element other than race." *Evans v. Newton*, *supra*, 382 U.S. at 301. As the Fourth Circuit recently declared, "[S]erving or offering to serve all members of the white population within a specified geographic area is certainly inconsistent with the nature of a truly private club." *Nesmith v. Young Men's Christian Ass'n of Raleigh, N.C.*, 397 F.2d 96, 102. See also, *Rockefeller Center Luncheon Club, Inc. v. Johnson*, 131 F. Supp. 703, 705 (S.D. N.Y.); *United States v. Richberg*, 398 F.2d 523 (C.A. 5).

¹⁶Expert testimony to this effect was offered by petitioners in the court below (T. 133-136, 138, 146-147). Also see, Urban Land Institute, *Open Space Communities in the Market Place* (Tech. Bulletin 57, 1966), 7, 21, 41, 47-48 (Plaintiffs' Exh. 28).

itan newspaper reveal the emphasis that is placed on the accessibility of a swimming pool in a neighborhood, and attest to the great importance that is attached to this feature in marketing homes.¹⁷

However, the evidence in this case shows that municipally-owned public swimming pools are virtually non-existent in the Washington metropolitan area of Northern Virginia; the "public function" of providing "mass recreation" (*Evans v. Newton*, *supra*, 382 U.S. at 302) through community swimming pools has been assumed by privately organized recreation associations.¹⁸ Because of the "abdication" by local municipalities of this "traditional governmental function" (*Mulkey v. Reitman*, 64 Cal. 2d 529, 413 P.2d 825, 832, *aff'd*, 387 U.S. 369), a significant role is played by "private" associations such as Little Hunting Park in fulfilling this community need. Accordingly, Negroes will be discouraged from moving into a neighborhood where such an association denies them access to the only convenient recreation facilities because of their race. Conversely, a property owner owning a share in such an association will be deterred from selling or renting his house to a Negro, since the Negro will be ineligible for purchase or assignment of the share. Accordingly, since as shown, a house has greater market value if the purchaser or tenant is eligible to use such a facility, if a Negro is able to obtain housing in a community where he is barred from the swimming pool association in which the seller or landlord is a shareholder,

¹⁷"[T]he community swimming pool is considered by most builders as one of their most popular sales appeals to people of all ages and incomes." 29 *Practical Builder* No. 2, p. 94 (Feb. 1964) (T. 148, Plaintiffs' Exh. 29). See also T. 148-151, Plaintiffs' Exh. 30.

¹⁸In the Northern Virginia metropolitan suburbs with a population of nearly 700,000 persons, there are only two municipally owned swimming pools and one lake for swimming (T. 138-139). By contrast, in this same area there are nearly 50 community swimming pools of the same type as Little Hunting Park. In the suburbs of Maryland and Virginia there are over 105 pools of this type. *The Washington Post*, p. A20, June 12, 1967.

there is an immediate loss in the value of the residence which must be borne by one of the parties to the transaction. Thus, an owner in these circumstances will either refuse to sell or rent to a non-Caucasian or else will require him to pay a higher price than the property is worth absent access to the recreation facility. "Solely because of their race, non-Caucasians will be unable to purchase, own, and enjoy property on the same terms as Caucasians." *Barrows v. Jackson*, *supra*, 346 U.S. at 254. And if this pattern is widespread, and as the record shows to be true for Northern Virginia, governments are unwilling to duplicate privately owned community recreation facilities with municipally operated facilities, non-Caucasians will be discouraged from purchasing or renting housing in whole sections of the State.

Undoubtedly, a significant factor underlying this Court's decision in *Barrows v. Jackson*, *supra*, and the closely related *Shelley v. Kraemer*, 334 U.S. 1, was recognition of the fact that a racially restrictive covenant is usually part of a system, the effect of which can be to blanket an entire community with racial restrictions, which create Negro and white ghettos. The racially discriminatory policy of Little Hunting Park, no less than the discriminatory policies of those who enter into racial covenants, creates a system which is the equivalent of, and has the effect of a racial zoning ordinance. It is "as if the State had passed a statute instead of leaving this objective to be accomplished by a system of private contracts, enforced by the State." *Bell v. Maryland*, 378 U.S. 226, 329 (dissenting opinion of Justice Black), quoted in *Reitman v. Mulkey*, 387 U.S. 369, 385 (concurring opinion of Justice Douglas). Cf. *Buchanan v. Warley*, 245 U.S. 60.¹⁹

¹⁹It should be further noted that the instant case, like *Shelley v. Kraemer*, involves an agreement voluntarily entered into by a white property owner and a Negro attempting to acquire property, with attempted intervention by a third party seeking to prevent performance. *Shelley* and *Barrows* make clear that where, as here, "both parties are willing parties" to such a contract a state court may not

5. Constitutional considerations provide further warrant for reversal of the state court's affirmance of Sullivan's expulsion from the corporation. If the directors' summary expulsion of Sullivan because of his dissent from their racial policy is allowed to stand, it will have the effect of granting them an immunity from criticism to which they are not constitutionally entitled. By assuming roles of leadership in Little Hunting Park, Inc.—an organization devoted to developing and operating a community recreation facility—the directors necessarily became parties to any matters of public interest or public controversy in which the association might become involved. It is apparent that whatever way the directors had acted with respect to the Freeman assignment, their decision was likely to be a subject for comment and criticism by members of the association, as well as other persons with an interest in the affairs of the community. The directors were not entitled, however, to expel Sullivan because he voiced opposition to their discriminatory racial policy. Since, as we have shown above, the *public function* performed by Little Hunting Park, Inc. makes it subject to constitutional limitations, forfeiture of an individual's rights under the First Amendment may not be made a condition of use of its facilities. *Marsh v. Alabama*, *supra*, 326 U.S. 501; *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, *supra*, 391 U.S. at 308; and see *Pickering v. Board of Education*, 391 U.S. 563.²⁰

give legitimacy to the effort to defeat the contract "on the grounds of the race or color of one of the parties." *Bell v. Maryland*, *supra*, 378 U.S. at 331 (dissenting opinion of Justice Black) (emphasis in original). It is, of course, immaterial whether the racial restriction is relied on as a basis for seeking affirmative relief, or, as here, is raised as a defense. *Spencer v. Flint Memorial Park Ass'n*, 4 Mich. App. 157, 144 N.W.2d 622, 626; *Clifton v. Puente*, 218 S.W.2d 272, 274 (Tex. Civ. App.). And see, *Rice v. Sioux City Memorial Cemetery*, 349 U.S. 70, 80 (dissenting opinion).

²⁰Courts have frequently been guided by the First Amendment in protecting the right of dissent within voluntary associations. See, e.g., *Crossen v. Duffy*, 90 Ohio App. 252, 103 N.E.2d 769, 778; *Mitchell v. International Ass'n of Machinists*, 196 Cal. App. 2d 796, 16 Cal.

The state court's sanctioning of Sullivan's expulsion from the recreation association because of his criticism of the directors' erection of a racial barrier to the use of its facilities is contrary to this Court's decision in *Curtis Publishing Co. v. Butts*, *supra*, 388 U.S. 130, holding that the First Amendment protects criticism of "public figures" who participate in events of public concern to the community. As was stated there (in the concurring opinion of Chief Justice Warren writing for a majority of the Court) with respect to the urbanized society that we know today:

In many situations, policy determinations which traditionally were channeled through formal political institutions are now originated and implemented through a complex array of boards, committees, commissions, corporations and associations, some only loosely connected with the Government. This blending of positions and power has also occurred in the case of individuals so that many who do not hold public office at the moment are nevertheless intimately involved in the resolution of important public questions or by reason of their fame, shape events in areas of concern to society at large.

Viewed in this context then, it is plain that although they are not subject to the restraints of the political process, "public figures," like "public officials," often play an influential role in ordering society. 388 U.S. at 163-164.

There can be little doubt that Little Hunting Park, Inc. plays the type of public role in the community that is referred to by the Chief Justice, and that the directors of the corporation are "public figures," as he used the term in the *Curtis Publishing* case. Further, as that case holds, it is violative of the First Amendment for the State to lend its

Rptr. 813, 816-820; *Madden v. Atkins*, 4 N.Y.2d 283, 151 N.E.2d 73, 78; *Gallagher v. American Legion*, 154 Misc. 281, 277 N.Y.S. 81, 85, *aff'd* 242 App. Div. 604, 271 N.Y.S. 1012; *Hurwitz v. Directors Guild of America*, 364 F.2d 67, 75-76 (C.A. 2), certiorari denied, 385 U.S. 971.

judicial processes to vindicate the aggrievement asserted by a public figure against critics of his manner of participating in events of public interest. Applied to the instant case, this means that the Virginia court could not sanction the directors' action in expelling Sullivan from the association merely because he refused to acquiesce in their discriminatory racial policy, but instead exercised his right to speak out critically concerning the matter. By holding that Sullivan's dissent from the association's policy constituted justification for his expulsion, the trial court invoked a standard of state law which had the effect of depriving Sullivan of rights protected by the First Amendment. *Pickering v. Board of Education*, 391 U.S. 563.²¹ This clearly is state action falling within the ambit of the Fourteenth Amendment. "The test is not the form in which state power has been applied, but whatever the form, whether such power has in fact been exercised." *New York Times Co. v. Sullivan*, 376 U.S. 254, 265. Accord: *Curtis Publishing Co. v. Butts*, *supra*, 388 U.S. at 146-155.

In addition, to permit the state court to sanction Sullivan's expulsion from Little Hunting Park, Inc. for protesting Freeman's exclusion from the community park would be to allow the State to "punish" him for his failure to abide by the directors' determination that he must "discriminate against non-Caucasians in the use of [his] property. The result of that sanction by the State would be to encourage" the use and observance of such racial restrictions on property. *Barrows v. Jackson*, *supra*, 346 U.S. at 254. See also *Reitman v. Mulkey*, *supra*, 387 U.S. at 380-381.

6. The state court's rejection of the appeals was arbitrary and unreasonable, and is not a bar to this Court's review of the important federal questions presented in this case. The

²¹ Little weight should be given to the board of directors' determination that Sullivan's conduct was "inimicable" [sic] to the corporation's members in view of the patent procedural deficiencies in the "hearing" granted him prior to his expulsion (*supra*, p. 11). See *Pickering v. Board of Education*, *supra*, 391 U.S. at 578-579 n. 2.

decree was entered in the *Sullivan* case by the trial court on April 12, 1967, and in the *Freeman* case on May 8, 1967. It is undisputed, as shown by the affidavits of counsel filed in the trial court, and incorporated in the record, that on the morning of June 9, 1967, counsel for the petitioners, Mr. Brown, notified Mr. Harris, counsel for the respondents, by telephone that he would submit the reporter's transcripts in the two cases to the trial judge that afternoon. Mr. Brown further informed Mr. Harris that because of errors in the transcripts, he was filing motions for correction of the record, noticing them for hearing one week hence, Friday, June 16, 1967, which was the court's next Motion Day. Finally, Mr. Brown told counsel that he would request the trial judge to defer signing both transcripts for a 10 day period to allow time for Mr. Harris to consent to the motions or to have them otherwise acted on by the court. That same day, June 9, Mr. Brown wrote Mr. Harris to confirm their telephone conversation, and in his letter Mr. Brown reiterated that he would request the judge not to sign the transcripts until they had been corrected. The afternoon of June 9, when Mr. Brown sought to tender the transcripts to the judge, the latter was away from his office and not expected to return that day, so Mr. Brown left the transcripts as well as a copy of his letter to Mr. Harris with the judge's secretary; the judge later ruled that the tender of the transcripts was made on Monday, June 12, the day that he received them. Meanwhile, motions to correct the two transcripts were served on Mr. Harris, along with the notice that they would be brought to hearing before the court on Friday, June 16.

On Monday morning, June 12, the trial judge acknowledged to Mr. Brown over the telephone that he had received the transcripts and the motions to correct the record. Pursuant to Mr. Brown's request, he agreed to defer signing the transcripts until the motions had been acted on. That same day, Mr. Harris wrote to Mr. Brown in reference to their telephone conversation of the preceding Friday, noting that because he did not have copies of the transcripts he could

not consent to the requested corrections without reviewing the testimony.

On Friday, June 16, the judge stated in court that the transcripts had been available in his office for one week, since the preceding Friday, for examination, but since it appeared that Mr. Harris had not examined them, the motions to correct the record would not be acted on until Mr. Harris indicated his agreement or disagreement with the changes requested. In order to facilitate Mr. Harris' examination of the transcripts, Mr. Brown lent him the petitioners' duplicate copies, which Mr. Harris had in his possession from 1:20 p.m., June 16, until 6:30 p.m., June 19, at which time they were returned to Mr. Brown. Upon returning the transcripts, Mr. Harris stated that he had no objections to any of the corrections requested by the petitioners or to the entry of orders granting the motions to correct the transcripts. Mr. Harris then signed the proposed orders granting the motions which Mr. Brown had prepared. The proposed orders were submitted to the trial judge on June 20, who thereupon entered them, and after the necessary corrections were made, signed the transcripts on that date.

On the basis of the foregoing facts and relevant decisions of the Supreme Court of Appeals of Virginia, it is clear that petitioners fully complied with Rule 5:1, Sec. 3(f). That court has repeatedly held that the rule is complied with when, as here, opposing counsel has actual notice of the tender of the transcript to the trial judge and has a reasonable opportunity to examine the transcript for accuracy before it is authenticated by the judge. See, *Bacigalupo v. Fleming*, 199 Va. 827, 102 S.E.2d 321, 326; *Hyson v. Dodge*, 198 Va. 792, 96 S.E.2d 792, 798-799; *Kornegay v. City of Richmond*, 185 Va. 1013, 41 S.E.2d 45, 48-49. In construing the rule, the Virginia court follows the practice of considering the facts and circumstances of each case, and on numerous occasions has overruled objections to appeals where, as here, it appears that the purpose of the rule has

been satisfied and the appellee has not shown that he was "in any way prejudiced" by the procedure followed. *Starkely v. Owens*, 189 Va. 248, 52 S.E.2d 164, 167.²² The *Radgall* case, *supra*, involved circumstances almost identical to those presented here, and illustrates the liberal construction customarily placed by the Virginia court on the rule in question. There the trial judge, after ruling that the prior notice to opposing counsel of tender had not met the requirement of reasonableness, advised the parties that he would defer signing the transcript for seven days to afford counsel opportunity to examine the transcript and indicate his objections, if any. In holding that this procedure complied with Rule 3-1, Sec. 3(D), the Supreme Court of Appeals stated (102 S.E.2d at 326).

The requirement that opposing counsel have a reasonable opportunity to examine the transcript sets out the purpose of reasonable notice. If, after receipt of notice, opposing counsel be afforded reasonable opportunity to examine the transcript, and to make objections thereto, if any he has, before it is signed by the trial judge, the object of reasonable notice will have been attained.

It is thus clear that even if insufficient advance notice was given to respondents' counsel, Mr. Harris, of the tender of the transcripts to the judge, this deficiency was cured by the ample opportunity that Mr. Harris had after the tender to examine the transcripts and the motions to correct the transcripts, and to make any objections thereto. Further, Mr. Harris' signing of the proposed orders granting the motions to correct the transcripts reflect the fact that he had examined the transcripts and the proposed corrections, and "waived" any further objections that he had to the procedure being followed. *Kornegay v. City of Richmond*,

²²See also, *Cook v. Virginia Holsum Bakeries, Inc.*, 207 Va. 815, 153 S.E.2d 209, 210; *Grimes v. Crouch*, 175 Va. 126, 7 S.E.2d 115, 116-117; *Town of Falls Church v. Myers*, 187 Va. 110, 46 S.E.2d 31, 34-35; *Taylor v. Wood*, 201 Va. 615, 112 S.E.2d 907, 910.

supra, *Grimes v. Crouch*, *supra*; *Taylor v. Wood*, *supra*. Although the state court, in the opinion it cites as the basis for rejecting the appeals, characterized the rule in question as "jurisdictional" (*Snead v. Commonwealth*, 200 Va. 850, 108 S.E.2d 399, 402), it is clear from the *Backgalupo* decision and other cases cited above, that the court exercises considerable discretion in determining whether it has been complied with. The state court thus not only ignored its own precedents in reaching the result it did here, but under the mode of practice that it allows, could have exercised its discretion to hear the appeals. That court's "discretionary decision" to deny the appeals did "not deprive this Court of jurisdiction to find that the substantive issue[s]" were properly before it. *Williams v. Georgia*, 349 U.S. 375, 389; *Shuttlesworth v. City of Birmingham*, 376 U.S. 339. See also, *Ward v. Board of County Commissioners*, 253 U.S. 17, 22; and cases cited *supra*, p. 5, n. 3.

CONCLUSION

For the foregoing reasons, the Court should grant this petition for a writ of certiorari and decide the case on the merits. In the event that the Court holds for the petitioners, it would appear that another remand to the Supreme Court of Appeals of Virginia would be futile, in view of that court's insistence that it does not have jurisdiction over the proceeding. Therefore, petitioners respectfully suggest that the Court may wish to treat this petition as a petition for a writ of certiorari to the Circuit Court of Fairfax County, Virginia, where the cases were tried. See *Callender v. Florida*, 383 U.S. 270, 380 U.S. 519. Cf. *Naim v. Naim*, 350 U.S. 985. Alternatively, the Court could formulate an order reversing the judgments of the courts below, and directing

the Circuit Court to enter an appropriate decree, including provision for such damages as that court may fix. See *Stanley v. Schwalby*, 162 U.S. 255, 279-283; 28 U.S.C. § 2106; 28 U.S.C. § 1651(a).²³

Respectfully submitted,

Allison W. Brown, Jr.
Suite 501, 1424-16th Street, N. W.
Washington, D. C. 20036

Peter Ames Eveleth
217 Fifth Street, S. E.
Washington, D. C. 20003

Robert M. Alexander
2011 S. Glebe Road
Arlington, Virginia 22204

Attorneys for Petitioners

Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019

Of Counsel

January 1969.

²³"The power to enter judgment and, when necessary, to enforce it by appropriate process, has been said to be inherent in the Court's appellate jurisdiction." *Fay v. Noia*, 372 U.S. 391, 467 (dissenting opinion of Justice Harlan). See *Williams v. Bruffy*, 12 Otto 248, 255-256; *Tyler v. Magwire*, *supra*, 17 Wall. at 289-293; *Martin v. Hunter's Lessee*, *supra*, 1 Wheat. at 361; *McCulloch v. Maryland*, 4 Wheat. 316, 437; *Gibbons v. Ogden*, 9 Wheat. 1, 239; *Kreshik v. St. Nicholas Cathedral*, 63 U.S. 190, 191.

APPENDIX A

STATUTES

42 U.S.C. Section 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. § 1977.

42 U.S.C. Section 1982. Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. R.S. § 1978.

CONSTITUTION OF THE UNITED STATES

Article VI

* * *

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

* * *

Amendments

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or

abridging the freedom of speech, or of the press; or the right of people peaceably to assemble, and to petition the Government for a redress of grievances.

* * *

Article XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

* * *

Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

RULES OF THE SUPREME COURT OF APPEALS OF VIRGINIA

Rule 5:1. The Record on Appeal

Sec. 3. Contents of Record

* * *

(D) Such a transcript or statement not signed by counsel for all parties becomes part of the record when delivered to the clerk, if it is tendered to the judge within 60 days and signed at the end by him within 70 days after final judgment.

It shall be forthwith delivered to the clerk who shall certify on it the date he receives it. Counsel tendering the transcript or statement shall give opposing counsel reasonable written notice of the time and place of tendering it and a reasonable opportunity to examine the original or a true copy of it. The signature of the judge, without more, will be deemed to be his certification that counsel had the required notice and opportunity, and that the transcript or statement is authentic. He shall note on it the date it was tendered to him and the date it was signed by him.

* * *

APPENDIX B

SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1967.

SULLIVAN ET AL. v. LITTLE HUNTING PARK,
INC., ET AL.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME
COURT OF APPEALS OF VIRGINIA.

No. 1188. Decided June 17, 1968.

PER CURIAM.

The petition for a writ of certiorari is granted and the judgment is vacated. The case is remanded to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, decided this date.

Mr. Justice Harlan and Mr. Justice White dissent for the reasons stated in Mr. Justice Harlan's dissenting opinion in *Jones v. James H. Mayer Co.*, 392 U.S. 409, 449, decided this date.

SUPREME COURT OF APPEALS
OF VIRGINIA

Present: All the Justices

PAUL E. SULLIVAN, ET AL.

-v- Record No. R-8257

LITTLE HUNTING PARK, INC.,
ET AL.

PER CURIAM

Richmond, Virginia

October 14, 1968

T. R. FREEMAN, JR., ET AL.

-v- Record No. R-8176

LITTLE HUNTING PARK, INC.,
ET AL.

On August 4, 1967, a petition for appeal was filed in this court by Paul E. Sullivan, his wife, and their seven minor children. On August 25, 1967, a petition for appeal was filed by T. R. Freeman, Jr., his wife, and their two minor children. The petitions sought the reversal of decrees of the Circuit Court of Fairfax County in two chancery causes wherein the Sullivans and the Freemans had filed individual bills of complaint against Little Hunting Park, Inc., a Virginia corporation chartered to operate a community swimming pool, and the directors thereof. The petitions asserted that by their bills, the complainants had sought injunctive relief and monetary damages for the allegedly wrongful acts of the defendants in refusing to approve the assignment by Sullivan of his membership share in the corporation to Freeman, a member of the Negro race, and in expelling Sullivan from membership in the corporation.

On December 4, 1967, this court rejected the said petitions and refused the said appeals because, in the words of the order entered in each case, "the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of

tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1, § 3(f); *Snead v. Commonwealth*, 200 Va. 850, 108 S.E.2d 399)."

On October 5, 1968, the clerk of this court received from the Supreme Court of the United States a copy of an order dated October 4, 1968, entered in the consolidated Sullivan and Freeman cases, amending an order entered June 17, 1968, and reciting that in the earlier order it was ordered and adjudged "that the judgments of the said Supreme Court of Appeals in these causes be vacated with costs, and that these causes be remanded to the Supreme Court of Appeals of the Commonwealth of Virginia for further consideration not inconsistent with the opinion of this Court."

The opinion of the Supreme Court referred to in its order of June 17, 1968, was as follows:

"The petition for a writ of certiorari is granted and the judgment is vacated. The case is remanded to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Alfred H. Mayer Co.*, U.S. , No. 645, decided this date."

The case of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 88 S. Ct. 2186, 20 L. ed. 2d 1189 (1968), referred to in the opinion of the Supreme Court, dealt not with the question of the application by a state appellate court of its rules of procedure in determining its jurisdiction to entertain an appeal. Instead, the *Jones* case dealt with the question of the refusal of the Mayer company to sell Mr. and Mrs. Jones a home because Mr. Jones was a Negro. By applying an 1866 act of Congress, 42 U.S.C. § 1982, the Court found such refusal discriminatory and illegal.

In *Snead v. Commonwealth*, 200 Va. 850, 108 S.E.2d 399, referred to in the orders of this court refusing the appeals in these cases, we held the terms of Rule 5:1, § 3(f) to be mandatory and jurisdictional, and for the failure of counsel for Snead to meet the requirements of the Rule, the writ of error and supersedeas was dismissed.

Our orders of December 4, 1967, refusing the appeals in these cases, were adjudications that this court had no jurisdiction to entertain the appeals because of the failure of counsel for the Sullivans and the Freemans to meet the requirements of Rule 5:1, § 3(f). Only this court may say when it does and when it does not have jurisdiction under its Rules. We had no jurisdiction in the cases when they were here before, and we have no jurisdiction now. We adhere to our orders refusing the appeals in these cases.

~~APPENDIX C~~VIRGINIA

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

The petition of Paul E. Sullivan, Flora L. Sullivan, and William F. Sullivan, Graciela P. Sullivan, Ana I. Sullivan, Maire Sullivan, M. Dolores Sullivan, M. Monica Sullivan and Brigid Sullivan, infants, who sue by Paul E. Sullivan, their father and next friend, for an appeal from a decree entered by the Circuit Court of Fairfax County on the 12th day of April, 1967, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and Little Hunting Park, Inc., and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1, § 3(f); *Snead v. Commonwealth*, 200 Va. 850, 108 S.E. 2d 399), doth reject said petition and refuse said appeal.

A Copy,

Teste:

Clerk

~~APPENDIX-D~~VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 4th day of December, 1967.

The petition of T. R. Freeman, Jr., Laura Freeman, and Dale C. Freeman and Dwayne L. Freeman, infants, who sue by T. R. Freeman, Jr., their father and next friend, for an appeal from a decree entered by the Circuit Court of Fairfax County on the 8th day of May, 1967, in a certain chancery cause then therein depending, wherein the said petitioners were plaintiffs and Little Hunting Park, Inc., and others were defendants, having been maturely considered and a transcript of the record of the decree aforesaid seen and inspected, the court being of opinion that the appeal was not perfected in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it (Rule 5:1 § 3(f); *Snead v. Commonwealth*, 200 Va. 850, 108 S.E. 2d 399), doth reject said petition and refuse said appeal.

A Copy,

Teste:

Clerk

~~ADMINISTRATIVE~~

SIXTEENTH JUDICIAL CIRCUIT OF VIRGINIA
 PRINCE WILLIAM COUNTY FAIRFAX COUNTY ALEXANDRIA CITY

Fairfax County Courthouse,
 Fairfax, Virginia, 22030,
 April 7, 1967.

Mr. Robert M. Alexander,
 1829 Columbia Pike,
 Arlington, Virginia, 22204

Mr. John C. Harris,
 1500 Belle View Boulevard,
 Alexandria, Virginia.

Re: Sullivan v. Little Hunting Creek Park,
 In Chancery No. 22751.

Gentlemen:

I find for the defendants in this case. It is my opinion that the expulsion of Mr. Sullivan should be upheld. The defendant Club may be a community recreation facility, but it is not a trade organization. It is private and social as is shown not only by its charter and By-Laws but also by its minutes, which regularly include a recital of "social activities." The requirement of approval of membership applications by the Board of Directors, even though the prospect might meet all other qualifications, would seem to be conclusive on this point. This being so, the Court's power to review the action of the Board of Directors is limited. I find no reason to set it aside. The Board acted within the powers conferred on it by the By-Laws, and there was ample evidence to justify its conclusion that the complainant's acts were *inimicable* to the Corporation's members and to the Corporation.

I do not believe property rights are involved in this case to any material extent. The number of memberships is inconsequential when considered with the number of homes in the residential areas mentioned in the By-Laws. The further fact there are such a large number of memberships available for sale with no buyers that the Directors considered the advisability of buying them in would appear to be a conclusive answer to this argument.

I do not find it necessary to pass on the defense that the stipulation of July 16, 1965, constituted a valid compromise and settlement and that under it the complainant is prevented from taking further action, although I am inclined to view that such is the case.

Mr. Harris can prepare a decree in accord with the foregoing and submit it to Mr. Alexander for his endorsement and exceptions.

Very truly yours,

James Keith.

JK:elc

Copy to:

Mr. Allison W. Brown, Jr.,
Suite 501, 1424 16th Street, N. W.,
Washington, D. C. 20036

† † †

VIRGINIA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

PAUL E. SULLIVAN, et al.,

Plaintiffs,

v.

RECHARDER, INC., et al.,

LITTLE HUNTING PARK, INC., et al.,

Defendants.

DECREE

This matter came on to be heard this 22d day of March, 1967, upon the bill of complaint, the answer of the defendants, upon the taking of evidence, upon argument of counsel, upon due consideration of the memoranda of law submitted by counsel, and the Court's specific finding that the defendant, LITTLE HUNTING PARK, INC., is a private and social club whose by laws require approval of the Board of Directors for membership, and there was ample evidence to justify a finding that the complainant's acts were inimicable to the corporation's members and to the corporation and the Board of Directors of the defendant corporation acted within the powers conferred upon it by the by laws of the corporation, it is therefore,

DECREED that the relief requested by the complainant be denied, to which ruling counsel for complainants except

THIS DECREE IS FINAL.

ENTERED this 12th day of April, 1967.

James Keith
Judge

Entered in Chancery Order
Book No. 120, page 318

SEEN.

John Chas. Harris
Counsel for Defendants

SEEN AND EXCEPTED

Robert M. Alexander
Allison W. Brown, Jr.
Peter Anne Evelyn

By Robert M. Alexander
Counsel for Complainants

~~APPENDIX F~~

SIXTEENTH JUDICIAL CIRCUIT OF VIRGINIA
PRINCE WILLIAM COUNTY FAIRFAX COUNTY ALEXANDRIA CITY

Fairfax County Courthouse,
Fairfax, Virginia, 22030,
April 21, 1967.

Mr. Robert M. Alexander,
1829 Columbia Pike,
Arlington, Virginia.

Mr. John C. Harris,
1500 Belle View Boulevard,
Alexandria, Virginia.

Re: Freeman v. Little Hunting Park, Inc.;
In Chancery No. 22752.

Gentlemen:

It is my opinion that the conclusion formerly reached in this matter that the defendant corporation is a private social club is controlling in this case. No constitutional right of the plaintiff has been violated. He does not come within the protection of the Civil Rights Act. The charter and by-laws of the corporation constitute a contract between the corporation and the members and between the members themselves. Under the by-laws, transfers and assignments are subject to the approval of the Board of Directors. All parties were aware of this fact. Section 13-105 of the 1950 Code of Virginia, relied on by the complainant, has been repealed. The refusal to approve the assignment to complainant appears to be consistent with the law and with the articles of incorporation. Therefore the relief prayed for will be denied.

Mr. Harris can prepare a decree in accordance with the foregoing and submit it to Mr. Alexander for his endorsement. I am sending a copy of this letter to Mr. Brown.

Very truly yours,

James Keith.

JK:elc

Copy to Mr. Allison W. Brown, Jr.

† † †

VIRGINIA :

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

T. R. FREEMAN, JR., et al.,

Plaintiffs.

v.

IN CHANCERY NO. 22752

LITTLE HUNTING PARK, INC., et al.,

Defendants.

DECREE

THIS cause came to be heard this 12th day of April, 1967 upon the bill of complaint, the answer of the defendants, upon the taking of evidence, upon argument by counsel, upon due consideration of the memoranda of law submitted by counsel, and the courts specific finding that the defendant, LITTLE HUNTING PARK, INC., is a private, social club whose by-laws require approval of the board of directors for transfers and assignments of membership; that no constitutional right of the complainants have been violated and they do not come within the protection of the Civil Rights Act, it, is, therefore,

ADJUDGED, ORDERED and DECREED that the relief requested by the complainants be denied, to which ruling counsel for complainants except.

THIS DECREE IS FINAL.

Entered this 8th day of May, 1967.

James Keith
Judge

SEEN:

John Chas. Harris
Counsel for Defendants

SEEN AND EXCEPTED:

Robert M. Alexander
Allison W. Brown, Jr.
Peter Ames Eveleth

By Robert M. Alexander
Counsel for Complainants

INDEX

Questions Presented.....	3
Statement of Facts.....	3, 4, 5, 6
Argument and Authorities.....	7, 8, 9, 10, 11, 12
Conclusion.....	12

CITATIONS

Cases:

- Bacigalupo v. Fleming
199 Va 827, 102 SE 2d 321
- Burton v. Wilmington Parking Authority,
365 U.S. 715
- Cook v. Virginia Holsum Bakeries, Incorporated
207 Va 815, 153 SE 2d 209
- Jones v. Alfred H. Mayer Co.
392 U.S. 409
- N.A.A.C.P. v. Alabama, 357 U.S. 449
- Ocean Accident Corp. v. Haley
158 Va 691, 164 SE 538
- Snead v. Commonwealth
200 Va 850, 108 SE 2d 399
- Staub v. City of Baxley, 355 U.S. 313
- Whitlow v. Grubb
198 Va 274, 93 SE 2d 134

STATUTORY AND CONSTITUTIONAL

- Rules of Court, Supreme Court of Virginia
5:1 § 3 (f)
- Civil Rights Act of 1866, 42 USC 1982
- First Amendment, United States Constitution
- Fourteenth Amendment, United States Constitution

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1968

No. 929

PAUL E. SULLIVAN, ET AL., Petitioners
v.
LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., Petitioners
v.
LITTLE HUNTING PARK, INC., ET AL.

BRIEF IN OPPOSITION TO PETITION

QUESTIONS PRESENTED

The Petitioners present five questions to the Court. Actually there are two questions for consideration.

1. Whether the procedural requirements of the Supreme Court of Appeals of Virginia are a non-federal ground for its refusal to accept the remand of this Court.

2. Whether membership in a voluntary, private social club, or association is within the complete control of the club or association which can grant or refuse such membership at will.

STATEMENT OF FACTS

1. Rule 5:1 of the Rules of the Supreme Court of Appeals in reference to contents of the record of appeal provides:

Counsel tendering the transcript or statement shall give opposing counsel *reasonable written* notice of the time and place of tendering it and a reasonable opportunity to examine the original or a true copy of it.

The notice of the tendering of the transcript to the trial judge was in the form of a letter, dated and mailed on Friday, June 9, 1967, by counsel for petitioners to the counsel for respondents stating that the transcript would be presented to the trial judge on that same day, June 9, 1967. In the usual course of mail delivery, the letter was received by counsel for respondents on Monday, June 12, 1967, three days after delivery to the trial judge. A copy of the transcript was "lent" to counsel for respondents eight days after the notice on June 16, 1967. Counsel for respondents had one working day to examine a lengthy transcript that contained numerous errors.

2. LITTLE HUNTING PARK, INC. was formed by residents of Fairfax County, Virginia in 1954 as a membership organization, financed by all those who paid an initial fee of \$150.00 for a certificate of membership. The initial by-laws of the corporation have changed little during the ensuing years and provided, in addition to the membership certificate, that each application for membership be in writing and approved by the Board of Directors. The club was unique insofar as the initial payment of \$150.00, or initiation fee was not forfeited when membership ceased but could be sold to another who was interested in membership. The assignee, according to the by-laws, would then apply to the Board of Directors for membership and, when accepted, pay the required dues. In the alternative, membership was often available directly from the corporation. The by-laws placed a geographical limitation on the residence of the proposed members. However, the geographical limitation was dropped and as of Freeman's application for membership, a large portion of the members were living outside the geographical limits.

In addition, the by-laws placed a limit on membership at 600 members which was a small portion of the actual residents within the geographical limits.

The initial by-laws, provided under the "purpose" clause:

The purpose of the corporation shall be to own (or lease), construct, develop, operate, maintain and manage suitable facilities for the safe and healthful recreation of the Corporation's members, said facilities to include a swimming pool, a park, and such other appurtenances as the corporation may deem desirable.

Temporary assignment of the privileges of membership was permitted for a period not in excess of one year, subject to the approval of the Board.

The club constructed a swimming pool, tennis courts and conducted numerous social activities on the club property. Access to the premises of the club was controlled at the "gate" where proof of membership was required prior to admittance.

3. Pursuant to the by-laws, Dr. Freeman submitted his application in writing to the Board of Directors for approval of his temporary membership. At a regular meeting of the Board of Directors on May 18, 1965, the application of Dr. Freeman was declined. The three members of the Board who testified in the trial court stated that there was no discussion, by the Board, of Dr. Freeman's race. The application for transfer of membership does not contain any indication as to the race of the applicant.

4. When Mr. Sullivan was served notice, pursuant to the club's by-laws, that he had the right to appear before the club's Board of Directors to show cause why he should not be expelled, he commenced an action in the Circuit Court of Fairfax County for the purpose of an injunction requiring the club to change the meeting date, allow counsel of his choosing to be present and to provide him with a bill of particulars of the charges against him. By stipulation, in open court, it was agreed that the club would agree to all of the foregoing on the condition that the action of the Board of Directors, in declining the membership of Dr. Freeman would be submitted to the general membership of the club and Mr. Sullivan would abide by the decision of the general membership. At a meeting of the membership, held on the 29th day of July, 1965, the membership overwhelmingly sustained the Board of Directors. Mr.

Sullivan has since refused to abide by the stipulation filed in the Circuit Court of Fairfax County, Virginia.

5. Paul E. Sullivan was given a bill of particulars concerning his conduct which the board felt was "inimical to the corporations members". These charges consisted of harrassment, rudeness, abusive language, libel and no reference was made to the submission of Dr. Freeman for membership. Mr. Sullivan was given a hearing before the Board, the presence of an attorney of his choice and the right to bring witnesses to testify in his behalf. The learned trial judge in his opinion letter stated that "there was ample evidence to justify its conclusion that the complainant's acts were inimical to the corporation's members and to the corporation".

ARGUMENT AND AUTHORITIES

1. The Supreme Court of Appeals of Virginia has consistently held that the notice requirement of the Rule 5:1 has been mandatory.

In 1959, the case of *SNEAD v. COMMONWEALTH*, 200 Va 850, 108 SE 2d 399, was decided by that court. Counsel for Snead, convicted of larceny, tendered notice to the Commonwealth Attorney, at 7:00 P.M. in the evening, that on the same day he would submit the transcript to the trial judge. The trial judge received the transcript at 7:30 P.M. that same evening. The Court held

The plain language of the Rule requires counsel to give opposing counsel reasonable written notice of the time and place of tendering the transcript or narrative of the evidence and to give him a reasonable opportunity to examine it. The duty rests on counsel to afford the reasonable opportunity to examine and not on the trial judge.

In *OCEAN ACCIDENT CORP. v. HALEY*, 158 Va 691, 164 SE 538, the court construed Section 6252 of the Code of Virginia 1919, which was later replaced by Rule 5:1 as follows:

"That the provisions of the statute is mandatory, and that the notice was not reasonable within the plain meaning of its terms, which are jurisdictional".

In *COOK v. VIRGINIA HOLSUM BAKERIES, INC.*, 207 Va 815, 153 SE 2d 209, the court held that since the opposing counsel had three days notice and the narrative of evidence consisted of only 12 pages, the

notice was reasonable and would not apply the ruling of *SNEAD v. COMMONWEALTH*, supra.

BACIGALUPO v. FLEMING, 199 Va 827, 102 SE 2d 321, is distinguished from the instant case in that the prior notice was given and the transcript tendered to counsel three days prior to submission to trial judge. The trial judge allowed another five days for counsel to correct errors prior to his signing.

The present case differs from *N.A.A.C.P. v. ALABAMA*, 357 U.S. 449 and *STAUB v. CITY OF BAXLEY*, 355 U.S. 313, insofar as the Alabama Court and the Georgia Court were not consistent in their procedure rulings in the above cases and their prior decisions.

In *WHITLOW v. GRUBB*, 198 Va 274, 93 SE 2d 134, the late chief justice of the Supreme Court of Appeals of Virginia stated:

The rules of appellate procedure are simple, brief, and expressed in unambiguous language. We have said repeatedly that compliance with them is necessary for the orderly, fair and expeditious administration of justice.

The late Justice Frankfurter dissenting in *STAUB v. CITY OF BAXLEY*, supra, stated:

The relevance of a state procedure requiring that constitutional issues be presented in their narrowest possible scope is confirmed by the practice of this Court. The Court has long insisted, certainly in precept, on vigorous requirements that must be fulfilled before it will pass on constitutionality of legislation, on avoidance of such determination even by strained statutory construction, when unavoidable, as narrow as circumstances will permit.

2. *BURTON v. WILMINGTON PARKING AUTHORITY*, 365 U.S. 715, held that the fourteenth amendment applies to state action and erects no shield against merely private conduct however discriminatory or wrongful.

On the basis of the word "community" used in the certificate of incorporation of the respondent, and ignoring all other evidence, the petitioners contend that the respondent is a public facility. Having thus determined that the facility is public the directors are "public figures". Public figures "are part of the state". The "state" cannot deprive a man of his free speech nor can a state abridge the privileges or immunities of Citizens of the United States.

Overlooked by the petitioners are the by-laws and the actual operation of the corporation since its founding in 1954. The petitioners have acknowledged the existence of a private club by submitting, for approval, to the Board of Directors, the form required for approval of the temporary assignment of membership privileges, calling a special meeting of the membership and in all other matters prior to the commencement of their action in court.

The petitioners further contend that since the facilities are also furnished in some areas by the state, hence the facilities of the respondent are public. We would be hard pressed today to find any activity that is strictly limited to the non-public sector with the possible exception of religion. In the recreation field, there are private golf courses and public ones, public tennis courts and private, public and private swimming, bridge, boating, and other social gatherings. The mere fact that a governing body sees fit to provide a means for the populace to use its leisure hours does not pre-empt the

individual from selecting a non-public way of using his free time.

To further strengthen their conclusion that the first and fourteenth amendments apply to the respondents, they contend that the state courts, an admitted arm of the state, gave validity to racial discrimination by ruling on the basis of evidence that the respondents were a social club. It must be remembered that in the trial court, the petitioners were the complainants and the respondents were the defendants. The respondents did not request the court to enforce a restrictive covenant.

Neither the court nor the respondents curtailed Mr. Sullivan's right to free speech. The respondents exercised their ante-constitutional right of freedom of association and elected to refrain from social contact with him because of his conduct. In the guise of free speech does anyone have the right to be antagonistic to and disruptive of this honorable court and still remain in its good graces? Or does the court reserve for itself something that is not available to the citizenry as a whole?

3. In *JONES v. ALFRED H. MAYER CO.*, 392 U.S. 409, the court stated:

We hold that § 1982 was intended to bar all racial discrimination, private as well as public, in the sale or rental of property, and the statute was a valid exercise of the power of Congress to enforce the Thirteenth Amendment.

Justice Stewart, in the majority opinion stated:

At the offset, it is important to make clear precisely what this case does not involve. . . . It does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwell-

ing. . . . And although it can be enforced by injunction, it contains no provision expressly authorizing a federal court to order the payment of damages.

The contention of the petitioners is that since the lease between the petitioners Sullivan and Freeman contained a clause transferring membership privileges in the club, the lease comes under 42 USC § 1982 and the interpretation thereof by *JONES v. ALFRED H. MAYER CO.*, supra. The respondents were not parties to the lease and not in privity with the parties thereto. The petitioner, Sullivan, could contract away only that which he possessed and by the subsequent actions of the petitioners, they acknowledged that the transfer of the privileges of membership was subject to the approval of the Board of Directors of the club.

§ 1982 states that all citizens of the United States shall have the same right, in every State and Territory, "as is enjoyed by white citizens thereof" Under the petitioners' interpretation of this paragraph, since it applies only to race or color, a Negro could have a right superior to white citizens for § 1982 would not guarantee membership in a club to a white person. It would then follow that a Negro would be entitled to membership on the basis of his race alone whereas white persons would be subject to acceptance or non-acceptance on other grounds.

When denying membership or membership privileges in a club or association, the board of directors or other group of members who are empowered with making this decision must refrain from specifying the reason for such non-acceptance or be ready to face a defamation suit from each prospective member that is refused. If the applicant is of the Negro race, and the petitioners'

contention is valid, the membership determination body must decide on the frying pan or the fire, by facing a defamation suit in revealing its reason for denial or a suit under § 1982.

The Board of Directors of LITTLE HUNTING PARK INC. did not, from the evidence of the three board members who testified in the trial court, discuss the race of the applicant, Freeman. However, they are adjudged guilty of discrimination on the basis of race strictly on the basis that Dr. Freeman is of the Negro race.

Dr. Freeman is now in Pakistan and the specific relief requested on his behalf is one of damages. Should the court rule that § 1982 applies in his case, would that paragraph entitle him to damages in view of the holding in *JONES v. ALFRED H. MAYER CO.*, supra, to the extent that that decision "does not authorize a federal court to order the payment of damages"?

Mr. Sullivan is white and possesses all the rights "as is enjoyed by white citizens".

CONCLUSION

On the basis of the foregoing, the petition for a writ of certiorari should be denied.

Respectfully submitted,

JOHN CHAS. HARRIS
1500 Belle View Boulevard
Alexandria, Virginia 22307
Attorney for Respondents

FILE COPY

No. 889 33

FILED

MAR 24 1969

JOHN E. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1968

PAUL E. SULLIVAN, et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

T. R. FREEMAN, JR., et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF VIRGINIA

PETITIONERS' REPLY
TO THE BRIEF IN OPPOSITION

Allison W. Brown, Jr.
Suite 501, 1424-16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Robert M. Alexander
2011 S. Glebe Road
Arlington, Virginia 22204

Attorneys for Petitioners

Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019

Of Counsel

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 929

PAUL E. SULLIVAN, et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

T. R. FREEMAN, JR., et al., *Petitioners*

v.

LITTLE HUNTING PARK, INC., et al.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF APPEALS OF VIRGINIA

PETITIONERS' REPLY
TO THE BRIEF IN OPPOSITION

/. Respondents seriously misrepresent the record when they assert: "The three members of the Board who testified in the trial court stated that there was no discussion by the Board, of Dr. Freeman's race" (br. in op., p. 5). None of the three board members who testified—Virginia Moore (T. 182-235, 298-317), S. L. Lennon (T. 258-277), or Oskar Egger (T. 277-291)—made any such statement. Further, Board Chairman Moore admitted that when the directors voted to disapprove the assignment of the share to Dr. Freeman they were aware that he was a Negro (T. 204); it is immaterial, therefore, whether, as respondents state, the application for assignment of membership contained any information concerning race (br. in op., p. 5).

Mr. and Mrs. Paul E. Sullivan both testified without contradiction that when they were visited at their home on May 28, 1965, by the three-man delegation from the board of directors, Mr. Hanley, the spokesman, indicated clearly to them that Dr. Freeman had been denied the share assignment because of his race (T. 17-18, 164). At no time previously in this proceeding have respondents seriously denied that the assignment of the share to Dr. Freeman was disapproved because he is a Negro (see, *e.g.*, T. 239-240, 281). It ill behooves respondents at this time, therefore, to try to create the impression that race is not the pivotal factor in these cases.

2. The settlement stipulation in another legal action between Paul E. Sullivan and Little Hunting Park, Inc., which is referred to by respondents (*br. in op.*, p. 5), was noted by the trial judge, but he specifically refused to pass on its effect, if any, on Sullivan's suit that is at issue here (*pet. appendix*, p. 39). The stipulation, entered into on July 16, 1965, between the parties in *Paul E. Sullivan v. Little Hunting Park, Inc.*, Chancery No. 21663, Circuit Court of Fairfax County, was raised by respondents only as a defense to the prayer in Sullivan's complaint herein which sought reversal of the directors' refusal to approve assignment of the share from Sullivan to Freeman (T. 83, 84-85, 88). Since the state court did not rule on the legal effect of the stipulation, however, it is not at issue before this Court. Furthermore, the stipulation is not a bar, in any event, to Freeman's suit at issue herein, and it has no bearing on Sullivan's expulsion from the association nor is it a defense to his action for reinstatement.

Finally, the trial judge's remark that the stipulation, if he were to pass on it, might be a valid defense to part of Sullivan's complaint, stems from a misunderstanding of the agreement. It is clear from the evidence that the conditions of the stipulation were never met, because, first, there was never a "meeting of the general membership . . . held pursuant to [Sullivan's] petition calling the same" (T. 84).

Rather, the record shows that the membership meeting held on July 29, 1965, had an agenda substantially different from the one contained in Sullivan's petition, and the corporation's membership, as such, never voted because the meeting was too disorderly and participated in by many people who were not members (T. 73-80, 174-175, 207-210, 261, 268-271, 318-321, 323-324, 325). Secondly, the stipulation only referred to "the assignment of the membership for this [1965] swimming year," and in no way barred Sullivan's continuing effort, by legal action or otherwise, to obtain approval of the assignment for 1966 and subsequent swimming years. In view of the foregoing, it is plain that respondents' reference to the stipulation at this time is misleading, for it is of no legal significance in relation to this Court's resolution of the important legal questions presented by this proceeding.

Respectfully submitted,

ALLISON W. BROWN, JR.

Suite 501

1424 16th Street, N.W.

Washington, D. C. 20036

PETER AMES EVELETH

217 Fifth Street, S.E.

Washington, D. C. 20003

JACK GREENBERG

JAMES M. NABRIT, III

10 Columbus Circle

New York, N. Y. 10019

Of Counsel

March 1969.

ROBERT M. ALEXANDER

2011 S. Glebe Road

Arlington, Virginia 22204

Attorneys for Petitioners

FILE COPY
No. ~~207~~ 33

FILED
JUN 13 1968

JOHN F. DAVIS, CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

PAUL E. SULLIVAN, ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

*On Writ of Certiorari to the
Supreme Court of Appeals of Virginia*

BRIEF FOR THE PETITIONERS

Allison W. Brown, Jr.
Suite 501, 1424-16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Robert M. Alexander
2011 S. Glebe Road
Arlington, Virginia 22204

Attorneys for Petitioners

Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019
Of Counsel

TABLE OF CONTENTS

	<u>Page</u>
PRIOR OPINIONS	1
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTORY AND CONSTITUTIONAL PROVISIONS	3
STATEMENT	3
A. Introduction	3
B. Little Hunting Park, Inc.—Its purpose and manner of operation	6
C. The corporation's directors refuse to approve the assignment of Paul E. Sullivan's share because the assignee, Dr. T. R. Freeman, Jr., and his family are Negroes	7
D. The corporation's directors expel Paul E. Sullivan because of his criticism of their refusal to approve the assignment of his share to Dr. T. R. Freeman, Jr. on the basis of race	9
E. Relief sought	11
SUMMARY OF ARGUMENT	12
ARGUMENT	15
I. The Supreme Court of Appeals of Virginia improp- erly refused to accept this Court's remand of the case	15
A. The non-federal procedural ground on which the Virginia court based its rejection of the remand had previously been held by this Court to be inadequate to bar consideration of petitioners' asserted federal rights	15
B. The procedural ruling of the Supreme Court of Appeals of Virginia which was the basis for its refusal to hear this proceeding is arbitrary and unreasonable, and inadequate to bar considera- tion of petitioners' asserted federal rights	17

II. The discriminatory racial policy of Little Hunting Park, Inc. violates the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1982)	21
III. The Fourteenth Amendment is violated by the discriminatory racial policy of Little Hunting Park, Inc., and by the state court in sanctioning it	29
IV. Sullivan's expulsion from the association may not be permitted to stand, because it was in retaliation for his effort to deal with Freeman on a non-discriminatory basis as required by §§ 1981, 1982	32
V. Sullivan's constitutional right of free speech was violated by Little Hunting Park, Inc. in expelling him because he dissented from its discriminatory racial policy, and by the state court in sanctioning the expulsion	33
VI. Sullivan's expressions of dissent from the racial policy of Little Hunting Park, Inc. were well within permissible limits of activity for a member of such an association	36
A. The judicially approved limits of membership conduct	36
B. Most of the charges against Sullivan were false and the rest were exaggerated characterizations by which the directors sought to mask their true intention to expel him because of his dissent from their racial policy	39
VII. The petitioners have valid claims for damages	50
CONCLUSION	54
APPENDIX	57

TABLE OF CITATIONS

CASES:

Abdon v. Wallace, 95 Ind. App. 604, 165 N.E. 68	37
Adam v. Saenger, 303 U.S. 59	55
Allnutt v. High Court of Foresters, 62 Mich. 110, 28 N.W. 802	38

<i>Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.</i> , 391 U.S. 308	14, 30, 34
<i>American Universal Insurance Co. v. Scherfe Insurance Agency</i> , 135 F. Supp. 407 (S.D. Iowa)	54
<i>Anderson v. Pantages Theater Co.</i> , 114 Wash. 2d, 194 P. 813 ...	52
<i>Angrisani v. Stearn</i> , 167 Misc. 731, 3 N.Y.S.2d 701, aff'd, 255 App. Div. 975, 8 N.Y.S.2d 997	38
<i>Antelope v. George</i> , 211 F. Supp. 657 (N.D. Idaho)	52, 53
<i>Bacigalupo v. Fleming</i> , 199 Va. 827, 102 S.E.2d 321	19, 21
<i>Baird v. Tyler</i> , 185 Va. 601, 39 S.E.2d 642	23
<i>Baker v. Marcus</i> , 201 Va. 905, 114 S.E.2d 617	54
<i>Barrows v. Jackson</i> , 346 U.S. 249	14, 30, 31, 33, 36
<i>Barry v. Edmunds</i> , 116 U.S. 550	53
<i>Barry v. The Players</i> , 147 App. Div. 704, 132 N.Y.S. 59	38
<i>Basista v. Weir</i> , 340 F.2d 74 (C.A. 3)	51
<i>Bell v. Hood</i> , 327 U.S. 678	50
<i>Bell v. Maryland</i> , 378 U.S. 226	31
<i>Bernstein v. Alameda-Contra Costa Medical Ass'n</i> , 139 Cal. App. 2d 241, 293 P.2d 862	32, 38
<i>Blackwell v. Harrison</i> , 221 F. Supp. 651 (E.D. Va.)	26
<i>Bolton v. Vellines</i> , 94 Va. 393, 26 S.E. 847	54
<i>Brazier v. Cherry</i> , 293 F.2d 401 (C.A. 5), cert. denied, 368 U.S. 921	51
<i>Brown v. Board of Education</i> , 347 U.S. 483	52
<i>Browning v. Slenderella Systems of Seattle</i> , 54 Wash. 440, 341 P.2d 859	52
<i>Buchanan v. Warley</i> , 245 U.S. 60	31
<i>Byrne v. Schuyler Elec. Mfg. Co.</i> , 65 Conn. 336, 31 Atl. 833 ...	28
<i>Callender v. Florida</i> , 383 U.S. 270	55
<i>Callender v. Florida</i> , 380 U.S. 519	55
<i>Caperci v. Huntoon</i> , 397 F.2d 799 (C.A. 1), cert. denied, 393 U.S. 940	51

Carlson v. Ringgold County Mutual Telephone Co., 252 Iowa 748, 108 N.W.2d 478	28
Chesapeake & Ohio Ry. Co. v. American Exchange Bank, 92 Va. 495, 23 S.E. 935	16
Clearfield Trust Co. v. United States, 318 U.S. 363	23
Clifton v. Puente, 218 S.W.2d 272 (Tex. Civ. App.)	31
Cook v. Virginia Holsum Bakeries, Inc., 207 Va. 815, 153 S.E.2d 209	19
Crossen v. Duffy, 90 Ohio App. 252, 103 N.E.2d 769	34, 39
Curtis Publishing Co. v. Butts, 388 U.S. 130	14, 34-35
Daniel v. Paul, 37 U.S.L. Week 4481 (U.S. June 2, 1969)	28
Durant v. Essex Co., 11 Otto 555	16
Edwards v. Habib, 397 F.2d 687 (C.A. D.C.)	32
Evans v. Newton, 382 U.S. 296	28, 30
Fay v. Noia, 372 U.S. 391	55
Franklin Plant Farm, Inc. v. Nash, 118 Va. 98, 86 S.E. 836 ...	54
Gallaher v. American Legion, 154 Misc. 281, 277 N.Y.S. 81, aff'd, 242 App. Div. 604, 271 N.Y.S. 1012	34, 37
Gibbons v. Ogden, 9 Wheat. 1	55
Gleiforst v. Workingmen's Sick & Death Benefit Fund, 37 Misc. 221, 75 N.Y.S. 44	39
Gottlieb v. Economy Stores, Inc., 199 Va. 848, 102 S.E.2d 345	38
Grimes v. Crouch, 175 Va. 126, 7 S.E.2d 115	19, 20
Hague v. Committee for Industrial Organization, 101 F.2d 774 (C.A. 3), modified on other grounds, 307 U.S. 496	53
Hamm v. Virginia State Board of Elections, 230 F. Supp. 156 (E.D. Va.), aff'd, 379 U.S. 19	26
Harris v. Sunset Islands Property Owners, Inc., 116 So. 2d 622 (Fla.)	29
Higgins v. American Society of Clinical Pathologists, 51 N.J. 191, 238 A.2d 665	32
Hitchcock v. American Plate Glass Co., 259 Fed. 948 (C.A. 3)	54

(v)

Howard v. Lyons, 360 U.S. 593	23
Hurwitz v. Directors Guild of America, 364 F.2d 67 (C.A. 2), cert. denied, 385 U.S. 971	34
Hyde v. Woods, 4 Otto 523	23
Hyson v. Dodge, 198 Va. 792, 96 S.E.2d 792	19
Int'l Brotherhood of Boilermakers, etc. v. Braswell, 388 F.2d 193 (C.A. 5)	54
Jones v. Mayer Co., 392 U.S. 409 ... 5, 16, 21-22, 23, 26, 50, 51, 53	
Kornegay v. City of Richmond, 185 Va. 1013, 41 S.E.2d 45 ..	19, 20
Kreshik v. St. Nicholas Cathedral, 363 U.S. 190	55
Lane v. Wilson, 307 U.S. 268	51
Lauderbaugh v. Williams, 409 Pa. 351, 186 A.2d 39	29
Lobato v. Pay Less Drug Stores, Inc., 261 F.2d 406 (C.A. 10)	54
Lombard v. Louisiana, 373 U.S. 267	26
Loving v. Virginia, 388 U.S. 1	26
Madden v. Atkins, 4 N.Y.2d 283, 151 N.E.2d 73	38, 39
Mahoney v. Sailors' Union of the Pacific, 43 Wash. 2d 874, 264 P.2d 1095	39
Malibou Lake Mountain Club v. Robertson, 219 Cal. App. 2d 181, 33 Cal. Rptr. 74	32, 38
Manning v. Klein, 1 Pa. Super. 210	32, 37
Marsh v. Alabama, 326 U.S. 501	14, 30, 34
Martin v. Hunter's Lessee, 1 Wheat. 304	16, 55
McArthur v. Pennington, 253 F. Supp. 420 (E.D. Tenn.)	52
McCulloch v. Maryland, 4 Wheat. 316	55
Meyers v. Lux, 76 S.D. 182, 75 N.W.2d 533	28
Miller v. Builders' League of New York, 29 App. Div. 630, 53 N.Y.S. 1016	38
Mitchell v. Int'l Ass'n of Machinists, 196 Cal. App. 2d 796, 16 Cal. Rptr. 813	34, 37
Monroe v. Pape, 365 U.S. 167	51

Morris v. Hussong Dyeing Machine Co., 81 N.J. Eq. 256, 86 Atl. 1026	28
Mountain Springs Ass'n v. Wilson, 81 N.J. Super. 564, 196 A.2d 270	29
Myers v. Anderson, 238 U.S. 368	51
N.A.A.C.P. v. Alabama, 377 U.S. 288	16, 55
N.A.A.C.P. v. Alabama, 360 U.S. 240	17
N.A.A.C.P. v. Alabama, 357 U.S. 449	16
Naim v. Naim, 350 U.S. 891; on remand, 197 Va. 734, 90 S.E.2d 849, appeal dismissed, 350 U.S. 985	55
Nash v. Florida Industrial Commission, 389 U.S. 235	32
National Cash-Register Co. v. Leland, 94 Fed. 502 (C.A. 1), cert. denied, 175 U.S. 724	54
National Labor Relations Board v. Industrial Union of Marine & Shipbuilding Workers, 391 U.S. 418	32
Nesmith v. Young Men's Christian Ass'n of Raleigh, N.C., 397 F.2d 96 (C.A. 4)	29
New York Times Co. v. Sullivan, 376 U.S. 254	35
Nixon v. Herndon, 273 U.S. 536	51
Page v. Edmunds, 187 U.S. 596	23
Parrot v. City of Tallahassee, 381 U.S. 129	16
People ex rel. Ward v. Up-Town Ass'n, 9 App. Div. 191, 41 N.Y.S. 154	39
Philadelphia, Wilmington & Baltimore R. Co. v. Quigley, 21 How. 202	53
Pickering v. Board of Education, 391 U.S. 563 . . .	34, 35, 38, 39, 50
Polin v. Kaplan, 257 N.Y. 277, 177 N.E. 833	38
Porterfield v. Black Bill & Doney Parks Water Users' Ass'n, 69 Ariz. 110, 210 P.2d 335	28
Public Utilities Comm'n v. Pollak, 343 U.S. 451	30
Ray v. Brotherhood of Railroad Trainmen, 182 Wash. 39, 44 P.2d 787	37
Reilly v. Hogan, 32 N.Y.S.2d 864, aff'd, 264 App. Div. 855, 36 N.Y.S.2d 423	39

Reitman v. Mulkey, 387 U.S. 369	26, 31, 36
Rhoads v. Horvat, 270 F. Supp. 307 (D. Colo.)	51, 53
Rice v. Sioux City Memorial Cemetery, 349 U.S. 70	31
Rockefeller Center Luncheon Club, Inc. v. Johnson, 131 F. Supp. 703 (S.D. N.Y.)	29
Schaubach v. Anderson, 184 Va. 795, 36 S.E.2d 539	16
Schneider v. Local Union No. 60, 116 La. 270, 40 So. 700	37
Schrank v. Brown, 192 Misc. 80, 80 N.Y.S.2d 452	39
Shelley v. Kraemer, 334 U.S. 1	13, 29, 30, 31
Sherrod v. Pink Hat Cafe, 250 F. Supp. 516 (N.D. Miss.)	51
Shuttlesworth v. City of Birmingham, 376 U.S. 339	21
Sibbald v. United States, 12 Pet. 488	16
Simkins v. Moses H. Cone Memorial Hospital, 323 F.2d 959 (C.A. 4), cert. denied, 376 U.S. 938	30
Simmons v. Avisco, Local 713, Textile Workers Union of America, 350 F.2d 1012 (C.A. 4)	53
Snead v. Commonwealth, 200 Va. 850, 108 S.E.2d 399	21
Solomon v. Pennsylvania R. Co., 96 F. Supp. 709 (S.D. N.Y.)	52
Spayd v. Ringing Rock Lodge No. 665, 270 Pa. 67, 113 Atl. 70	32, 37
Spencer v. Flint Memorial Park Ass'n, 4 Mich. App. 157, 144 N.W.2d 622	31
Stanley v. Schwalby, 162 U.S. 255	55
State ex rel. Waring v. Georgia Medical Society, 38 Ga. 608, 95 Am. Dec. 408	32, 37
Staub v. City of Baxley, 355 U.S. 313	16
Stein v. Marks, 44 Misc. 140, 89 N.Y.S. 921	37
Steele v. Louisville & Nashville R. Co., 323 U.S. 192	51
Stokely v. Owens, 189 Va. 248, 52 S.E.2d 164	19
Sullivan v. Little Hunting Park, Inc., 392 U.S. 657	1, 3, 5
Sullivan v. Little Hunting Park, Inc., 209 Va. 279, 163 S.E.2d 588	1

Sullivan v. Little Hunting Park, Inc., 12 Race Rel. L. Rep. 1008	2
Tate v. Department of Conservation and Development, 133 F. Supp. 53 (E.D. Va.), aff'd, 231 F.2d 615 (C.A. 4, cert. denied, 352 U.S. 838	26, 30
Taylor v. Wood, 201 Va. 615, 112 S.E.2d 907	19, 20
Terry v. Adams, 345 U.S. 461	30
Testa v. Katt, 330 U.S. 386	16
Texas & Pacific Ry. Co. v. Rigsby, 241 U.S. 33	51
Textile Workers v. Lincoln Mills, 353 U.S. 448	23
Thompson v. Grand Int'l Brotherhood of Locomotive Engineers, 41 Tex. Civ. App. 176, 91 S.W. 834	32, 38
Town of Falls Church v. Myers, 187 Va. 110, 46 S.E.2d 31	19
Trounstone v. Bauer, Pogue & Co., 144 F.2d 379 (C.A. 2), cert. denied, 323 U.S. 777	54
Tuckerton Beach Club v. Bender, 91 N.J. Super. 167, 219 A.2d 529	29
Tyler v. Magwire, 17 Wall. 253	16, 17, 55
United States v. Richberg, 398 F.2d 523 (C.A. 5)	29
United States v. Standard Oil Co., 332 U.S. 301	23
Ward v. Board of County Commissioners, 253 U.S. 17	21
Washington v. Official Court Stenographer, 251 F. Supp. 945 (E.D. Pa.)	51
Wilcox v. Supreme Council of Royal Arcanum, 210 N.Y. 370, 104 N.E. 624	39
Williams v. Bruffy, 12 Otto 248	55
Williams v. Georgia, 349 U.S. 375	21
Wills v. Trans World Airlines, Inc., 200 F. Supp. 360 (S.D. Calif.)	53
Wood v. Vaughan, 209 F. Supp. 106 (W.D. Va.), aff'd sub nom. Thaxton v. Vaughan, 321 F.2d 474 (C.A. 4)	26, 30
Wyandotte Transportation Co. v. United States, 389 U.S. 191	51

Yockel v. German American Bund, Inc., 20 N.Y.S.2d 774 (Sup. Ct.)	39
---	----

CONSTITUTIONAL AND STATUTORY PROVISIONS:

Article VI of the Constitution	3, 16
First Amendment to the Constitution	3, 14, 34, 36
Thirteenth Amendment to the Constitution	3
Fourteenth Amendment to the Constitution	3, 13, 29, 35, 36
Civil Rights Act of 1866 (14 Stat. 27):	
42 U.S.C. § 1981	2, 3, 13, 14, 21, 22, 23, 26, 27, 32, 33, 36, 51
42 U.S.C. § 1982	2, 3, 13, 14, 21, 22, 23, 26, 27, 32, 33, 36, 50, 51
42 U.S.C. § 1988	51
28 U.S.C. § 1257(3)	2
28 U.S.C. § 1651(a)	55
28 U.S.C. § 2106	55
Code of Virginia, 1950 (1949 ed.), § 13-220	6
Rules of the Supreme Court of Appeals of Virginia, Rule 5:1, § 3(f), 2 Code of Virginia, 1950 (1957 Replace. Vol.) 602	4-5, 19, 20

MISCELLANEOUS:

6 Am. Jur., Associations	50
Comment, Judicial Control of Actions of Private Associa- tions, 76 Harvard Law Review 983 (1962)	50
Comment, Civil Actions for Damages Under the Federal Civil Rights Statutes, 45 Texas Law Review 1015 (1967)	51
Outdoor Recreation Resources Review Commission, Outdoor Recreation for America (1962)	24-25
Practical Builder, Vol. 29, No. 2 (February 1964)	24
Urban Land Institute, Open Space Communities in the Market Place (Tech. Bulletin 57, 1966)	24
Washington Evening Star, January 20, 1967	24
Washington Evening Star, Noon edition, April 25, 1969	24
Washington Post, June 12, 1967	24
Washington Post, March 28, 1969	25

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1968

No. 929

PAUL E. SULLIVAN, ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

*On Writ of Certiorari to the
Supreme Court of Appeals of Virginia*

BRIEF FOR THE PETITIONERS

PRIOR OPINIONS

The previous *per curiam* opinion of this Court remanding these cases to the Supreme Court of Appeals of Virginia is reported at 392 U.S. 657 (A. 244). The opinion of the Supreme Court of Appeals of Virginia subsequent to the order of remand is reported at 209 Va. 279, 163 S.E.2d 588 (A. 247). The memorandum orders of the Supreme Court of Appeals of Virginia rejecting the appeals from the trial court were entered December 4, 1967, and are not

reported (A. 242, 243). The decision of the trial court in the *Sullivan* case was contained in a letter to the parties dated April 7, 1967, which is reported at 12 Race Rel. L. Rep. 1008, and the decree was entered April 12, 1967 (A. 232-234). The trial court's decision in the *Freeman* case was contained in a letter dated April 21, 1967, which is not reported, and the decree was entered May 8, 1967 (A. 235-236).

JURISDICTION

The judgment of the Supreme Court of Appeals of Virginia was entered October 14, 1968. The petition for a writ of certiorari was filed January 10, 1969, and was granted April 1, 1969. The jurisdiction of this Court rests on 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether the Supreme Court of Appeals of Virginia properly relied upon a non-federal procedural ground as the sole basis for refusing to accept the remand of this Court after this Court had held that such ground was inadequate to bar consideration of the federal questions presented by this case.

2. Whether the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1982) which guarantees Negroes the same rights as are enjoyed by white persons to make and enforce contracts and to lease and hold property is violated when a Negro, because of his race, is not permitted by the board of directors of a community recreation association to use a membership share which has been assigned to him by his landlord as part of the leasehold estate.

3. Whether a landlord who is expelled from a community recreation association because he voices disagreement with the directors' racially motivated refusal to approve his assignment of a share in the association to his Negro tenant may obtain relief from the association's retaliatory action under the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1982).

4. Whether the Fourteenth Amendment to the Constitution of the United States is violated by a community recreation association when it excludes from its facilities on the basis of his race, a person who is otherwise eligible to use them, and by a state court in sanctioning the exclusion.

5. Whether the free speech protections of the First and Fourteenth Amendments to the Constitution of the United States are violated by a community recreation association when it expels a shareholder for dissenting from its discriminatory racial policy, and by a state court in sanctioning the expulsion.

STATUTORY AND CONSTITUTIONAL PROVISIONS

The statutory provisions involved are 42 U.S.C. §§ 1981 and 1982. The relevant provisions of the Constitution of the United States are Article VI, the First Amendment, the Thirteenth Amendment, and the Fourteenth Amendment, Section 1. The foregoing provisions are set forth in the Appendix, *infra*, pp. 57-59.

STATEMENT

A. Introduction

These cases are before the Court following the refusal by the Supreme Court of Appeals of Virginia to accept the remand ordered by this Court on June 17, 1968. 392 U.S. 657.¹

¹The petitioners at bar in the *Sullivan* case, in addition to Paul E. Sullivan, are Flora L. Sullivan, his wife, and their seven minor children, William F. Sullivan, Graciela P. Sullivan, Ana I. Sullivan, Maire Sullivan, M. Dolores Sullivan, M. Monica Sullivan, and Brigid Sullivan, who sued by and through Paul E. Sullivan, their father and next friend. In the *Freeman* case the petitioners, in addition to T. R. Freeman, Jr., are Laura Freeman, his wife, and their two minor children, Dale C. Freeman and Dwayne L. Freeman, who sued by and through T. R. Freeman, Jr., their father and next friend. Respondents in both cases, in addition to Little Hunting Park, Inc., are Mrs. Virginia Moore, Ronald L. Arnette, S. Leroy Lennon, Raymond R. Riesgo, Mrs. Marjorie Madsen, William J. Donohoe, Oskar W. Egger,

Briefly, respondent Little Hunting Park, Inc., is a Virginia non-stock corporation organized for the purpose of operating a community park and swimming pool for the benefit of residents of certain housing subdivisions in Fairfax County, Virginia. A person who owns a membership share entitling him to use the association's facilities is permitted under the corporate by-laws, in the event he rents his house to another, to assign the share to his tenant, subject to approval by the board of directors. In the instant case the directors refused to approve such an assignment from Paul E. Sullivan to Dr. T. R. Freeman, Jr., solely on the ground that Freeman and the members of his family are Negroes. When Sullivan protested the directors' discriminatory racial policy and sought to reverse their refusal to approve the assignment, they expelled him.

Petitioners brought two suits in the state court challenging on federal and state grounds the racial restriction imposed by the directors on the assignment of the share in the association. Additionally, Sullivan asserted the unlawfulness of his expulsion. Injunctive relief and monetary damages were sought in both cases (A. 4-36). Following the overruling of a demurrer in the *Freeman* case (A. 40-41), two trials were conducted, resulting in dismissal of both complaints. The trial judge held that the corporation is a "private social club" with authority to determine the qualifications of those using its facilities, including the right to deny such use on the basis of race (A. 232, 235). The court also held that the corporation's expulsion of Sullivan was permitted by its by-laws and was justified by the evidence (A. 232). Petitions for appeal were thereafter submitted to the Supreme Court of Appeals of Virginia, which were rejected for the stated reason that petitioners had failed to comply with a procedural rule of that court (A. 242-243).²

and Milton W. Johnson, individuals who were directors of said corporation at times material herein.

²The Virginia court, citing its Rule 5:1, Sec. 3(f), (Appendix, *infra*, pp. 58-59), stated that the appeals were "not perfected in the

In their first petition for a writ of certiorari filed in this Court on March 1, 1968 (No. 1188, October Term 1967), petitioners contended that the Virginia court's interpretation of its procedural rule to bar the appeals was arbitrary and unreasonable—warranted neither by the facts nor the court's prior construction of its procedural rule. Accordingly, petitioners asserted that in view of the claimed violations of their federally protected rights, the procedural ground on which the state court based its decision should be examined to determine its adequacy to bar review of the proceeding by this Court. In a *per curiam* opinion rendered June 17, 1968, the Court granted certiorari, vacated the judgment and remanded the case to the Supreme Court of Appeals of Virginia for further consideration in light of *Jones v. Mayer Co.*, 392 U.S. 409. *Sullivan v. Little Hunting Park, Inc.*, 392 U.S. 657 (A. 244).

The mandate of this Court (A. 245-246) was thereafter received by the Supreme Court of Appeals of Virginia and on October 14, 1968, that court issued an opinion declaring its refusal to accept the remand. The court cited as its reason the same ground originally given for refusing to hear the cases, *i.e.*, petitioners' asserted failure to perfect their appeals from the trial court because of non-compliance with the procedural rule (A. 247-250).

manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it" (A. 242, 243). The rule referred to provides that as part of the procedure for certifying a record for appeal the reporter's transcript must be tendered to the trial judge within 60 days and signed at the end by him within 70 days after final judgment. The rule also states: "Counsel tendering the transcript . . . shall give opposing counsel reasonable written notice of the time and place of tendering it and a reasonable opportunity to examine the original or a true copy of it." 2 Code of Virginia, 1950 (1957 Replace. Vol.) 602.

B. Little Hunting Park, Inc. Its purpose and manner of operation

Little Hunting Park, Inc. was incorporated in 1954 under the Virginia Non-Stock Corporation Law² for the purpose, as set forth in its certificate of incorporation, of organizing and maintaining "a community park and playground facilities" for "community recreation purposes" (A. 24, 120-121). Pursuant to this object, the corporation owns land on which it has built and operates a swimming pool, tennis courts and other recreation facilities for the benefit of residents of the subdivisions known as Bucknell Manor, Beacon Manor, White Oaks, Bucknell Heights and certain adjacent neighborhoods in Fairfax County, Virginia (A. 26, 121, 143). The corporation's by laws provide that shares may be purchased by adult persons who "reside in, or who own, or who have owned housing units" in one of the specified subdivisions (A. 28, 121). A share entitled all persons in the immediate family of the shareholder to use the corporation's recreation facilities (A. 28, 121-122).

The by laws limit the number of shares in the corporation to 600 (A. 28, 121). There is no limit, however, to the number of shares that an individual may own, and it is not unusual for a person owning more than one house in the neighborhood served by Little Hunting Park pool to own a separate share for the use of the family occupying each house (A. 46, 123-124). Shares may also be purchased by institutions and corporations owning property in the area where the swimming pool is located. Thus, a share is owned by a church located in the neighborhood, and shares have been owned by two real estate companies that built and marketed the houses in Bucknell Manor and Beacon Manor, subdivisions served by Little Hunting Park. These two corporations have, at various times, owned at least 25 shares which they have retained for periods ranging from 5 to 7 years (A. 216-218).

² § 13-220, Code of Virginia, 1950 (1949 ed.).

The right to use Little Hunting Park's facilities may be acquired by purchase or by temporary assignment of a corporate share. The share may be purchased directly from the corporation, from any shareholder, or, upon buying a house in the community, from the vendor as part of the consideration for the purchase price of the house (A. 46, 28-29, 122-123). A person residing within one of the subdivisions served by Little Hunting Park may obtain temporary assignment of a share; however, an assignment may only be made from landlord to tenant (A. 28-29, 123, 128).⁴

The corporation's by laws have always provided that the issuance and assignment of shares are subject to approval by the board of directors (A. 29, 49-50, 125, 148). There were 1,183 shares issued and 322 shares assigned during the period from 1955 through 1966, the first 12 years of the corporation's existence (A. 125-126). However, with the exception of the assignment described below to Dr. T. R. Freeman, Jr., there is no record of any assignment ever being denied approval by the directors (A. 127-128). One applicant for the purchase of a share was disapproved during that period, but there is no evidence that this was other than because of the individual's failure to satisfy the geographic residence requirement of the by laws (*ibid*).

C. The corporation's directors refuse to approve the assignment of Paul E. Sullivan's share because the assignee, Dr. T. R. Freeman, Jr., and his family are Negroes.

From December 1950 to March 1962, Paul E. Sullivan and his family lived in a house which Sullivan owned and continues to own on Quander Road in the Bucknell Manor subdivision (A. 45). In May 1955, shortly after Little

⁴Regardless of whether the swimming pool and park facilities are used by the shareholder or assignee, the owner of a share is obligated to pay an annual assessment in order to keep his share valid (A. 46, 128).

Hunting Park, Inc. was organized, Sullivan purchased a share, No. 290, for \$150 (*ibid*). In March 1962, Sullivan and his family moved a short distance to another house that Sullivan purchased located on Coventry Road in the White Oaks subdivision where, as part of the purchase price for the property, Sullivan acquired a second share from the seller of the house. Share No. 925 was thereafter issued to Sullivan by the corporation (A. 46, 78-79). After moving to Coventry Road, Sullivan continued paying the annual assessments on shares Nos. 290 and 925, and leased his house on Quander Road to various tenants. In consideration of the rent, he assigned share No. 290 as part of the leasehold interest (A. 46, 49). As Sullivan testified, the lease arrangement was a "package deal . . . the house, the yard and the pool share" (A. 46).

On February 1, 1965, Sullivan leased the Quander Road premises for a term of one year to Dr. F. R. Freeman, Jr. at a rent of \$1,548, payable in monthly installments of \$129 (A. 46-47). The deed of lease described the property devised as "the dwelling located at 6810 Quander Road, Bucknell Manor, Alexandria, Virginia 22306, and Little Hunting Park, Inc. pool share No. 290" (Pl. Ex. 3, A. 47, 177). The lease was extended in identical terms as of February 1, 1966, and February 1, 1967 (A. 47). Dr. Freeman met all of the eligibility requirements for an assignee of a share in the corporation, since he is an adult, and the house that he leased from Sullivan is in Bucknell Manor subdivision (A. 47, 111). Freeman has no disqualifications, he is an agricultural economist with a Ph.D. degree from the University of Wisconsin, and at the time of the events herein was employed by the Foreign Agriculture Division of the United States Department of Agriculture (A. 116-117). He also holds the rank of Captain in the District of Columbia National Guard (A. 117). Dr. Freeman and his wife and children are Negroes (*ibid*).

In April 1965, Paul E. Sullivan paid the annual assessment of \$37 on share No. 290 and, pursuant to his obliga-

tion contained in the lease on the Quander Road property, completed the form prescribed by the corporation affirming that Dr. Freeman was his tenant and therefore eligible to receive the assignment of that share (A. 47-48). Additionally, Dr. Freeman supplied certain information and signed the form, thereby doing everything required by the corporation to qualify as an assignee of the share (A. 48). However, the board of directors of the corporation, meeting on May 18, 1965, refused to approve the assignment of share No. 290 to Dr. Freeman, because he and the members of his family are Negroes (A. 48, 51-52, 112-113, 130-131, 145-146, 155-156, Pl. Ex. 12; A. 55, 188-189). On May 25, 1965, Sullivan received a letter from S. L. Lennon, the corporation's membership chairman, notifying him that his assignment of share No. 290 to Dr. Freeman had been denied approval by the board of directors, no reason was given (Pl. Ex. 7, A. 48-49, 178-179).

D. The corporation's directors expel Paul E. Sullivan because of his criticism of their refusal to approve the assignment of his share to Dr. T. R. Freeman, Jr. on the basis of race.

Sullivan, upon learning of the directors' disapproval of his assignment to Dr. Freeman, sought further information concerning their action (Pl. Ex. 8; A. 50, 179-180, 49). In response to his inquiry, a delegation from the board membership chairman S. L. Lennon, John R. Hanley, a former president and director of the corporation, and Oskar W. Egger, a director visited Mr. and Mrs. Sullivan at their home on May 28, 1965, and admitted that Dr. Freeman had been rejected solely because of his race (A. 51-53, 112-113, 147-148, 150-151, 155, Pl. Ex. 12; A. 55, 188-189). To Sullivan, this action was shocking, and as a matter of his religious teaching and conviction, immoral; he so informed the delegation. Furthermore, as a resident of the neighborhood for many years and as a member of Little Hunting Park, Inc. since its inception, he could not believe their assertion that the board's action reflected the unani-

mons view of the members of the corporation (A 52, 54, 112-113). Nor could Sullivan in good conscience accept the board's offer to purchase share No. 290 which he had contracted to assign to Dr. Freeman (A 52).

Following this meeting, Sullivan and Dr. Freeman, who was also his fellow parishioner, sought the advice of their priest, Father Eugene Walsh, who suggested that the board might reconsider its action if the directors had an opportunity to meet with Dr. Freeman and consider his case on its merits (A 36-37). The suggestion that such a meeting be held was rebuffed, however, by Mrs. Virginia Moore, the corporation's president, when Sullivan spoke to her on June 9 (A 57-58). At about the same time, Sullivan spoke with several other shareholders, who, upon learning of the board's action, wrote letters to President Moore in which they expressed their strong disagreement with the board's action in disapproving Dr. Freeman (A 137-141). After receipt of these letters, the board met on June 11, and decided that there appeared to be "due cause" for Sullivan's expulsion from the corporation because of his "non-acceptance of the Board's decision" on the assignment of his share "along with the continued harassment of the board members, etc." (Pl. Ex. 11, A 59, 190, 130, 138, 139).¹

Sullivan was told of the board's action in a letter from President Moore dated July 7, 1965, which also informed him that he would be given a "hearing" by the directors on July 20, 1965 (A 59). Because the directors refused to postpone the hearing in order that Sullivan's attorney could appear with him, and because they refused to provide Sullivan with a statement of the conduct alleged to constitute the basis for his expulsion, Sullivan commenced a civil action in the Circuit Court of Fairfax County to enjoin the

¹ The sole ground for expulsion provided under the corporate by-laws is for conduct "inimicable [sic] to the corporation's members." Article III, Section 6(b). The board purported to act under this section in expelling Sullivan (A 29, 59, 131-132).

hearing (Pl. Ex. 19; A. 70-71, 198-200). Settlement of the action was reached upon the corporation's agreeing to postpone the hearing to August 17, 1965, and to furnish a detailed statement of the charges against him (*ibid.*). A statement specifying the alleged grounds for Sullivan's expulsion was thereafter furnished to him (Pl. Exs. 9, 10, 11; A. 53-54, 180-187, 711⁶).

At the hearing held by the directors on August 17, no evidence was introduced in support of any of the allegations against Sullivan, and he was not permitted to learn the identity of the persons making charges against him, nor to question them. He was also denied permission to have a reporter present to transcribe the proceeding. He had only the opportunity to present evidence concerning the charges as he understood them, and to state his views (A. 67, 71-72, 77, 97-98, 157-158). On August 24, 1965, the board met, and unanimously voted to expel Sullivan (A. 143). By letter of August 27, 1965, Sullivan was notified by President Moore of his expulsion, and he was tendered the then current "sale price" of his two shares, plus prorated annual assessments on the two shares, the total amounting to \$399.34 (Pl. Ex. 20, 72, 200-201, 116).

E. Relief sought

Petitioners seek injunctive relief and monetary damages under the Civil Rights Act of 1866 (14 Stat. 27, 42 U.S.C. §§ 1981, 1982), as well as under the First, Thirteenth and Fourteenth Amendments. However, since the petitioners in the *Freeman* case no longer reside in the area served by Little Hunting Park, Inc., their claim is now limited solely to compensatory and punitive damages, pursuant to the allegations of their complaint, as the result of having been denied access for 2 years to the community recreation facilities operated by the corporation.⁷ Petitioners in the

⁶The allegations against Sullivan are discussed in detail, *infra*, pp. 39-50.

⁷In June 1967, Dr. Freeman and his family left the United States

Sullivan case, in addition to seeking an order compelling full reinstatement of Paul E. Sullivan in Little Hunting Park, Inc. and reinstatement of share Nos. 290 and 925, ask for a declaration of the invalidity of the association's racial policy and an injunction against its continued observance. They also seek compensatory and punitive damages from respondents for Paul E. Sullivan's wrongful expulsion from the association and the denial to them of the use of its facilities.

SUMMARY OF ARGUMENT

I

The Supreme Court of Appeals of Virginia, on the sole ground that petitioners had allegedly failed to perfect their appeals from the trial court, refused to accept the remand of this Court. This non-federal procedural ground was the same reason advanced by the Virginia court initially in refusing to hear the appeals, and this Court's remand on the first petition for a writ of certiorari constituted an implicit holding that the state procedural ground of decision was inadequate to bar consideration of the important federal questions raised. This is the law of the case, therefore, and the Virginia court by failing to adhere to it and to comply with the order of remand, violated its duty under the Supremacy Clause of the Constitution. On the other hand, if the Court concludes that it has not settled the question of the adequacy of the state ground of decision, petitioners submit that they did comply with the procedural rule as construed in prior decisions of the Virginia court. Therefore, the discretionary decision of the Virginia court in refusing to hear the appeals was plainly arbitrary and does not foreclose this Court's consideration of the case in view of the important federal rights asserted by petitioners.

for Pakistan where Dr. Freeman was to serve as Assistant Agricultural Attache in the United States Embassy.

II.

The board of directors of Little Hunting Park, Inc. refused to approve the assignment of the membership share in the corporation to Dr. T. R. Freeman because he and his family are Negroes, thereby denying the Freemans the same rights as white persons to make and enforce contracts, and to lease real and personal property, as guaranteed by the Civil Rights Act of 1866 (42 U.S.C. §§ 1981, 1982). The racial policy of the respondents not only denies Negroes the right to use the community recreation facilities operated by the corporation, but tends to reinforce a pattern of racial segregation in housing, since access to such facilities bears an important relationship to the desirability and market value of residential property in neighborhoods such as those in suburban metropolitan Washington, D.C. Negroes will naturally be discouraged from moving into a locality where they are barred from recreation facilities which are open to white residents of the neighborhood. Furthermore, since Little Hunting Park, Inc. was created to and does serve the public function of providing community recreation facilities, a function shown to be abdicated by local governments to private organizations, the corporation may not, consonant with the requirements of the Fourteenth Amendment, operate on a racially segregated basis. Finally, the state court was without authority under the Fourteenth Amendment to sanction or give validity to the racial bar interposed by the corporation to the assignment of the membership share from Sullivan to Freeman. *Shelley v. Kraemer*, 334 U.S. 1.

III.

42 U.S.C. §§ 1981, 1982 not only guarantee rights of freedom from discrimination to Negroes, but also impose correlative obligations on persons not to treat Negroes discriminatorily. Thus, if Sullivan had refused to assign his membership share in the association to Freeman because of the latter's race, he would have violated the statute. However, because he dealt with Freeman on a non-

discriminatory basis and sought to reverse the directors' refusal to approve the assignment so that he could fulfill his contract to Freeman. Sullivan was expelled from the association. Since Sullivan's expulsion was in retaliation for his having obeyed the dictate of the law the expulsion was against public policy, and he should be reinstated. For the law to sanction punishment of a person such as Sullivan for refusing to discriminate against Negroes would be to render nugatory the rights guaranteed to Negroes by 42 U.S.C. §§ 1981, 1982, and encourage the use and observance of racial restrictions on contracts and property. *Barrows v. Jackson*, 346 U.S. 249. Furthermore, by giving sanction to Sullivan's expulsion, the state court deprived Sullivan of his rights, guaranteed by the First Amendment to criticize the conduct of the association's directors, who, by virtue of holding that position in community life, had become public figures. *Curtis Publishing Co. v. Butts*, 388 U.S. 130. Since the operation of a community recreation facility such as Little Hunting Park is a public function, the association which operates such a facility may not permissibly condition the use of its property upon the forfeiture of an individual's First Amendment rights. *Marsh v. Alabama*, 326 U.S. 501; *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, 391 U.S. 308. Sullivan's expressions of dissent from Little Hunting Park's racial policy were well within judicially recognized limits of permissible conduct, and were in performance of his higher public duties as a citizen. The false and exaggerated accusations brought by the directors against Sullivan to justify his expulsion from the association confirm the retaliatory motive underlying the action. Since, as shown, Sullivan's expulsion violated public policy as well as constitutional principles, he is entitled to reinstatement.

IV.

As a consequence of respondents' actions, petitioners have been denied access to the community recreation facilities operated by Little Hunting Park, Inc. They have also

suffered damage to their reputations and have been subjected to severe physical and emotional strain arising from the humiliation, embarrassment and indignity caused by respondents' conduct. Petitioners, therefore, not only should be compensated for these injuries, but respondents, because of their malicious and unjustified conduct in manifest disregard of the rights of petitioners should be required to respond in punitive damages.

V.

In view of the recalcitrance displayed by the Supreme Court of Appeals of Virginia in refusing this Court's prior remand, the Court should eschew futility, and exercise its inherent power to enter an order reversing the judgments of the courts below, and directing the trial court to enter an appropriate decree, including provision for such damages as that court may fix in accordance with standards delineated by this Court.

ARGUMENT

I. THE SUPREME COURT OF APPEALS OF VIRGINIA IMPROPERLY REFUSED TO ACCEPT THIS COURT'S REMAND OF THE CASE

- A. The non-federal procedural ground on which the Virginia court based its rejection of the remand had previously been held by this Court to be inadequate to bar consideration of petitioners' asserted federal rights.

This Court, by vacating the original judgment of the Supreme Court of Appeals of Virginia and remanding this proceeding to that court for further consideration, impliedly held that the non-federal ground on which the Virginia court had rejected the original appeals was inadequate to bar consideration of the important federal rights asserted by petitioners. In their first petition for a writ of certiorari in this Court, petitioners discussed in detail the question of their alleged non-compliance with the Virginia court's procedural rule. Petitioners related the various steps

which they had taken pursuant to the state rule, and showed that they had in fact complied with its terms as construed in prior decisions by the Virginia court. Accordingly, petitioners urged this Court to examine the record of the state proceedings to determine whether the "procedural ground" on which the Virginia court based its judgment was "adequate to bar review by this Court," citing *Parrot v. City of Tallahassee*, 381 U.S. 129.⁸ Further, in their brief in opposition to the first petition for certiorari respondents relied solely on the contention that petitioners had not perfected their appeals because of alleged non-compliance with the procedural rule.

This Court's holding, implicit in its order vacating the judgment and remanding to the state court, that the state ground of decision was inadequate to bar consideration of the federal questions involved represented the law of the case which the Virginia court was required to observe. *Tyler v. Magwire*, 17 Wall. 253, 282-283; *Sibbald v. United States*, 12 Pet. 488, 491-492; *Durant v. Essex Co.*, 11 Otto 555, 556-557. However, the court refused to accept the remand, repeating the same reason that it had given previously for rejecting the appeals, namely, petitioners' alleged failure to comply with the procedural rule. As a consequence, the court failed to reconsider the case, as this Court had directed, in light of *Jones v. Mayer Co.*⁹ By refusing to accept this Court's decision that the state ground was an inadequate basis for disposing of petitioners' rights, the Virginia court violated its duty under the Supremacy Clause of Article VI of the Constitution. *Martin v. Hunter's Lessee*, 1 Wheat. 304. The state court's decision

⁸In their petition for certiorari, petitioners also relied on *N.A.A.C.P. v. Alabama*, 377 U.S. 288, 297; *Staub v. City of Baxley*, 355 U.S. 313, 318-320; *N.A.A.C.P. v. Alabama*, 357 U.S. 449, 454-458.

⁹State courts, of course, are frequently called on to construe federally created rights. See, *Testa v. Katt*, 330 U.S. 386, and cases therein cited; *Chesapeake & Ohio Ry Co. v. American Exchange Bank*, 92 Va. 495, 23 S.E. 935, 937; *Schaubach v. Anderson*, 184 Va. 795, 36 S.E. 2d 539, 541-542.

cannot stand, therefore, and it is appropriate for this Court to proceed to a consideration of the merits of petitioners' claims.¹⁰

B. The procedural ruling of the Supreme Court of Appeals of Virginia which was the basis for its refusal to hear this proceeding is arbitrary and unreasonable, and inadequate to bar consideration of petitioners' asserted federal rights.

If the Court concludes that it has not settled the question of the adequacy of the state ground of decision and decides to give further consideration to that issue, the relevant facts and authorities are as follows:

The decree was entered in the *Sullivan* case by the trial court on April 12, 1967, and in the *Freeman* case on May 8, 1967 (A. 233-234, 236). It is undisputed, as shown by the affidavits of counsel filed in the trial court, and incorporated in the record, that on the morning of June 9, 1967, counsel for the petitioners, Mr. Brown, notified Mr. Harris, counsel for the respondents, by telephone that he would submit the reporter's transcripts in the two cases to the trial judge that afternoon (A. 238-239). Mr. Brown further informed Mr. Harris that because of errors in the transcripts, he was filing motions for correction of the record, noticing them for hearing one week hence, Friday, June 16, 1967, which was the court's next Motion Day (A. 239). Finally, Mr. Brown told counsel that he would request the trial judge to defer signing both transcripts for a 10-day period to allow time for Mr. Harris to consent to the motions or to have them otherwise acted on by the court (*ibid.*). That same day, June 9, Mr. Brown wrote Mr. Harris to confirm their telephone conversation, and in his letter Mr. Brown reiterated that he would request the judge not

¹⁰If the Court agrees with petitioners' first contention that it has previously decided that the state ground of decision was inadequate to support the judgment, this holding presumably is not now subject to reexamination. *Tyler v. Magwire*, *supra*, 17 Wall. at 283-284; *N.A.A.C.P. v. Alabama*, 360 U.S. 240, 245, and cases cited.

to sign the transcripts until they had been corrected (A. 237, 239). The afternoon of June 9, when Mr. Brown sought to tender the transcripts to the judge, the latter was away from his office and not expected to return that day, so Mr. Brown left the transcripts as well as a copy of his letter to Mr. Harris with the judge's secretary; the judge later ruled that the tender of the transcripts was made on Monday, June 12, the day that he received them (A. 239, 118, 176, 231, 239). Meanwhile, motions to correct the two transcripts were served on Mr. Harris, along with the notice that they would be brought to hearing before the court on Friday, June 16 (A. 239-240).

On Monday morning, June 12, the trial judge acknowledged to Mr. Brown over the telephone that he had received the transcripts and the motions to correct the record (A. 241). Pursuant to Mr. Brown's request, he agreed to defer signing the transcripts until the motions had been acted on (*ibid.*). That same day, Mr. Harris wrote to Mr. Brown in reference to their telephone conversation of the preceding Friday, noting that because he did not have copies of the transcripts he could not consent to the requested corrections without reviewing the testimony (A. 238).

On Friday, June 16, the judge stated in court that the transcripts had been available in his office for one week, since the preceding Friday, for examination, but since it appeared that Mr. Harris had not examined them, the motions to correct the record would not be acted on until Mr. Harris indicated his agreement or disagreement with the changes requested (A. 240). In order to facilitate Mr. Harris' examination of the transcripts, Mr. Brown lent him the petitioners' duplicate copies, which Mr. Harris had in his possession from 1:20 p.m., June 16, until 6:30 p.m., June 19, at which time they were returned to Mr. Brown (*ibid.*). Upon returning the transcripts, Mr. Harris stated that he had no objection to any of the corrections requested by the petitioners or to the entry of orders granting the motions to correct the transcripts (*ibid.*). Mr. Harris then

signed the proposed orders granting the motions which Mr. Brown had prepared (*ibid.*). The proposed orders were submitted to the trial judge on June 20, who thereupon entered them, and after the necessary corrections were made, signed the transcripts on that date (*ibid.*).

On the basis of the foregoing facts and relevant decisions of the Supreme Court of Appeals of Virginia, it is clear that petitioners fully complied with Rule 5:1, Sec. 3(f). That Court has repeatedly held that the rule is complied with when, as here, opposing counsel has actual notice of the tender of the transcript to the trial judge and has a reasonable opportunity to examine the transcript for accuracy before it is authenticated by the judge. See *Bacigalupo v. Fleming*, 199 Va. 827, 102 S.E.2d 321, 326; *Hyson v. Dodge*, 198 Va. 792, 96 S.E.2d 792, 798-799; *Kornegay v. City of Richmond*, 185 Va. 1013, 41 S.E.2d 45, 48-49. In construing the rule, the Virginia court follows the practice of considering the facts and circumstances of each case, and on numerous occasions has overruled objections to appeals where, as here, it appears that the purpose of the rule has been satisfied and the appellee has not shown that he was "in any way prejudiced" by the procedure followed. *Stokely v. Owens*, 189 Va. 248, 52 S.E.2d 164, 167.¹¹ The *Bacigalupo* case *supra*, involved circumstances almost identical to those presented here, and illustrates the liberal construction customarily placed by the Virginia court on the rule in question. There the trial judge, after ruling that the prior notice to opposing counsel of tender had not met the requirement of reasonableness, advised the parties that he would defer signing the transcript for seven days to afford counsel opportunity to examine the transcript and indicate his objections, if any. In holding that this procedure complied with Rule 5:1, Sec.

¹¹ See also, *Cook v. Virginia Holsom Bakeries, Inc.*, 207 Va. 815, 153 S.E. 2d 209, 210; *Grimes v. Crouch*, 175 Va. 126, 7 S.E. 2d 115, 116-117; *Town of Falls Church v. Myers*, 187 Va. 110, 46 S.E. 2d 31, 34-35; *Taylor v. Wood*, 201 Va. 615, 112 S.E. 2d 907, 910.

3(f), the Supreme Court of Appeals stated (102 S.E.2d at 326):

The requirement that opposing counsel have a reasonable opportunity to examine the transcript sets out the purpose of reasonable notice. If, after receipt of notice, opposing counsel be afforded reasonable opportunity to examine the transcript and to make objections thereto, if any he has, before it is signed by the trial judge, the object of reasonable notice will have been attained.

It is thus clear that even if insufficient advance notice was given to respondents' counsel, Mr. Harris, of the tender of the transcripts to the judge, this deficiency was cured by the ample opportunity that Mr. Harris had after the tender to examine the transcripts and the motions to correct the transcripts, and to make any objections thereto. Further, Mr. Harris' signing of the proposed orders granting the motions to correct the transcripts shows that he had examined the transcripts and the proposed corrections, and "waived" any further objections that he had to the procedure being followed. *Kornegay v. City of Richmond, supra; Grimes v. Crouch, supra; Taylor v. Wood, supra.*¹²

¹² Respondents have suggested that Mr. Harris did not have sufficient time to examine the transcripts even after their tender to the judge. This is baseless, however, for as shown above, the judge noted that the transcripts were available for examination in his office for a week prior to his consideration of the motions to correct the record. Further, Mr. Harris had petitioners' copies of the transcripts in his possession for an additional 3½ days, after which he voluntarily relinquished them and signed the proposed orders granting the motions to correct the transcripts. Finally, since the decree of the trial court in the *Freeman* case was not entered until May 8, 1967, the 70-day period under Rule 5:1, Sec. 3(f) within which the judge was required to sign that transcript did not expire until July 17, 1967. Thus, Mr. Harris had over a month to examine the *Freeman* transcript after tender, had he desired further time.

Although the Supreme Court of Appeals of Virginia, in its opinion rejecting the remand from this Court, characterizes the procedural rule in question as "jurisdictional,"¹³ it is clear from the *Bacigalupo* decision and other cases cited above that the court exercises substantial discretion in determining whether the rule has been complied with. The state court thus not only ignored its own precedents in reaching the result it did here, but under the mode of practice that it allows, could have exercised its discretion to hear the appeals. That court's "discretionary decision" to deny the appeals does "not deprive this Court of jurisdiction to find that the substantive issue[s]" are properly before it. *Williams v. Georgia*, 349 U.S. 375, 389; *Shuttlesworth v. City of Birmingham*, 376 U.S. 339. See also, *Ward v. Board of County Commissioners*, 253 U.S. 17, 22; and cases cited *supra*, p. 16 at n. 8.

II. THE DISCRIMINATORY RACIAL POLICY OF LITTLE HUNTING PARK, INC. VIOLATES THE CIVIL RIGHTS ACT OF 1866 (42 U.S.C. §§ 1981, 1982)

On the basis of the Court's recent decision in *Jones v. Mayer Co.*, *supra*, 392 U.S. 409, it is clear that the discrimination inflicted by respondents on T. R. Freeman, Jr. and his family because the Freemans are Negroes, deprived the Freemans of rights secured by 42 U.S.C. §§ 1981, 1982. Although the Court in the *Jones* case dealt principally with § 1982, since both § 1981 and § 1982 derive from a single clause of Section 1 of the Civil Rights Act of 1866 (14 Stat. 27), it is evident that they must be given comparable scope. Thus, like the right to "purchase [and] lease . . . real and personal property" the right to "make and enforce contracts" without discrimination on the basis of race is not merely an assurance against hostile state action but is a guarantee against "interference from any source whatever, whether governmental or private." *Jones v. Mayer Co.*, *supra*, 392 U.S. at 423-424. Here, also Congress meant

¹³ And see *Snead v. Commonwealth*, 200 Va. 850, 108 S.E. 2d 399, 402.

exactly what it said—that it intended “to prohibit *all* racially motivated deprivations of the rights enumerated in the statute . . .” *Id.* at 426, 436 (emphasis in original). And it equally follows that “the statute thus construed, is a valid exercise of the power of Congress to enforce the Thirteenth Amendment.” *Id.* at 413. On its face, therefore, § 1981 prohibits all private racially motivated conduct which denies or interferes with a Negro’s right to make and enforce a contract.

The complaint in the *Freeman* case embodies two causes of action: one alleging wrongful interference by respondents with the performance of the deed of lease between Sullivan and Freeman, and the other asserting wrongful deprivation by respondents of Freeman’s full use and enjoyment of the leasehold estate demised to Freeman under the deed of lease. Here the record shows that prior to Freeman’s becoming a tenant in Sullivan’s house, Sullivan had entered into the same type of lease agreement, including assignment of the pool share, with other tenants, but it was only in the case of Freeman, the Negro, that respondents interfered with the performance and prevented full use and enjoyment of the leasehold estate. By disapproving the assignment of Share No. 290 to Freeman and thus preventing performance of the contract between Sullivan and Freeman solely because of the latter’s race, respondents violated Freeman’s right under § 1981 to make and enforce a contract under the same conditions as white persons.

Freeman’s rights under § 1982 also were violated by respondents. Share No. 290 was an integral part of the leasehold interest conveyed from Sullivan to Freeman and represented part of the value for which Freeman paid the rent specified in the lease. Therefore, respondents’ refusal to approve the assignment infringed on Freeman’s right under § 1982 to lease and hold real property without restriction on the basis of his race. In addition, it is evident that under common law principles a membership share in Little Hunting Park, Inc., a non-stock corporation, itself consti-

tutes personal property within the meaning of § 1982. *Hyde v. Woods*, 4 Otto 523; *Page v. Edmunds*, 187 U.S. 596; *Baird v. Tyler*, 185 Va. 601, 39 S.E.2d 642, 645-646.¹⁴ Accordingly, by refusing to permit the assignment of share No. 290 from Sullivan to Freeman pursuant to their lease agreement, respondents violated additional rights secured to Freeman under that section.

From the foregoing it is seen that respondents' discrimination against Dr. Freeman because of his race falls within the express terms of both § 1981 and § 1982. But more than a simple denial of access to a community swimming pool is involved, for here, as with the plaintiffs in the *Jones* case, the discrimination suffered by Dr. Freeman bears directly on his choice of a home for himself and his family. The racial restriction erected by Little Hunting Park cannot help but discourage the Freemans and other Negro families from wanting to live in that neighborhood. White residents of the neighborhood, because they can obtain shares in the association through purchase or by assignment from their landlords, have access to local recreation facilities from which their Negro neighbors are barred.

There can be little doubt that the availability of neighborhood recreation facilities such as those provided by Little Hunting Park—a swimming pool, tennis courts and park—substantially enhances the desirability and value of

¹⁴Whether or not a Little Hunting Park membership share is personal property under the law of Virginia is not necessarily controlling here. In light of the *Jones* case, the federal courts will be called upon to develop a body of law as to what, for example, constitutes "property" under § 1982 and a "contract" under § 1981. Such determinations should not be made subject to the law of the various state jurisdictions. In order that there be uniformity in the disposition of matters that are within the area of federal legislative jurisdiction, the fashioning and application of federal law is appropriate. *Clearfield Trust Co. v. United States*, 318 U.S. 363; *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 457; *Howard v. Lyons*, 360 U.S. 593, 597. See also *United States v. Standard Oil Co.*, 332 U.S. 301, 307.

nearby residential property.¹⁵ The real estate advertisements in any metropolitan newspaper reveal the emphasis that is placed on the accessibility of a swimming pool in a neighborhood, and attest to the great importance that is attached to this feature in marketing homes.¹⁶

Privately established recreation associations organized principally to build and operate neighborhood swimming pools have become particularly common in localities where other water recreation facilities such as public swimming pools and beaches are not readily accessible. Thus, in the Washington metropolitan area of Northern Virginia, where municipally operated swimming pools are virtually nonexistent,¹⁷ there are about 50 community pool associations such as Little Hunting Park, Inc. and in all the Washington suburbs, including those in Northern Virginia and Maryland, there are over 105 pools of this type.¹⁸ This number understandably increases each year as the suburban population increases and new housing subdivisions are opened.¹⁹

¹⁵Expert evidence to this effect was offered by petitioners in the court below (A. 99-108, 223-228). Also see, Urban Land Institute, *Open Space Communities in the Market Place* (Tech. Bulletin 57, 1966) 41-42, 47-50 (Pl. Ex. 28; A. 103-106, 253-260).

¹⁶"[T]he community swimming pool is considered by most builders as one of their most popular sales appeals to people of all ages and incomes." 29 *Practical Builder* No. 2, p. 94 (Feb. 1964) (Pl. Ex. 29; A. 106-108, 261-266). In one 12-page advertising supplement in *The (Washington) Evening Star*, issue of January 20, 1967, there were over 50 advertisements for apartments and houses in which prominent mention was made of the swimming pool facilities (Pl. Ex. 30; A. 107-108).

¹⁷In the Northern Virginia suburbs, with a population of nearly 700,000 persons, there are only two municipally owned pools and one lake for swimming (A. 102).

¹⁸*The Washington Post*, p. A 20, June 12, 1967. A recent survey showed 42 community pool associations operating in Montgomery County, Maryland. *The (Washington) Evening Star*, p. B-1, Noon edition, April 25, 1969.

¹⁹In a recent study, authorized by Congress, the Outdoor Recreation Resources Review Commission concluded that "by the

Thus, it is obvious that Negroes will be discouraged from moving into a neighborhood where the neighborhood recreation association denies them access to its facilities because of their race.²⁰ Conversely, a property owner, such as Paul Sullivan, owning a share in such an association will be deterred from selling or renting his house to a Negro, because the Negro will be ineligible for purchase or assignment of the share. Since as shown, a house has greater market value if the purchaser or tenant is eligible to use the neighborhood recreation facilities, if a Negro is able to obtain housing in a community where he is barred from the swimming pool association in which the seller or landlord is a shareholder, there is an immediate loss in the value of the residence which must be borne by one of the parties to the transaction. Thus, an owner in these circumstances will either refuse to sell or rent to a Negro or else will require him to pay a higher price than the property is worth absent access to the recreation facility. And if this pattern is widespread, and if, as the record shows to be true for Northern Virginia, local governments are unwilling to duplicate privately established community recreation facilities with municipally operated facilities, Negroes will be deterred from purchasing or renting housing in whole sections of the State. Bearing in mind the Congressional purpose of assuring Negroes that their rights under the Thirteenth Amendment include "the freedom to buy what-

year 2000 swimming will be the most popular single outdoor recreation activity." O.R.R.C., *Outdoor Recreation for America*, p. 172 (1962).

²⁰Increasing the availability of housing for Negroes in the suburbs is generally recognized as an important step toward alleviating the pressures felt today in the ghettos of most of our cities. Although there has been some migration of Negroes out of the center city into the suburbs of Washington, D.C., it has been slight. The Ford Foundation recently made a grant of \$300,000 to establish a Housing Opportunities Council which will have a full-time staff whose function will be to encourage and aid Negroes wishing to find housing in the Washington suburbs. *The Washington Post*, p. B 1, March 28, 1969.

ever a white man can buy, the right to live wherever a white man can live" (*Jones v. Mayer Co.*, 392 U.S. at 443), a declaration by this Court that the discriminatory racial policy of Little Hunting Park, Inc. falls within the ambit of §§ 1981, 1982 is fully warranted.²¹

To agree with petitioners' contention that §§ 1981, 1982 are applicable to this case it is not necessary for the Court

²¹ Even under the view of §§ 1981, 1982 taken by the dissenters in *Jones v. Mayer Co.*, Little Hunting Park's racial policy is invalid. In the dissenting opinion it is stated that the most that can be said with assurance about the intended impact of the 1866 Civil Rights Act on private discrimination is that it was envisioned as prohibiting "official, community sanctioned discrimination in the South, engaged in pursuant to local 'customs' which in the recent time of slavery probably were embodied in laws or regulations." 392 U.S. at 475. Applying that principle to the instant case, it is significant that historically and continuing to this day, numerous aspects of Virginia's governmental and political system have been designed to foster and maintain a racially segregated society in the State. An extensive scheme of constitutional and statutory provisions has been adopted over the years which inject racial discrimination into many phases of public and private life. The "official command" to segregate contained in such enactments, when heard by private citizens such as the directors of Little Hunting Park, Inc. "has at least as much coercive effect as an ordinance." *Lombard v. Louisiana*, 373 U.S. 267, 273; and see *Reffman v. Mulkey*, 387 U.S. 369, 380. The index to the Virginia Code contains three pages of references to constitutional and statutory provisions requiring segregation of the races. Some of these laws have been invalidated through litigation. See, e.g., *Loving v. Virginia*, 388 U.S. 1 (anti-miscegenation statutes); *Hamm v. Virginia State Board of Elections*, 230 F. Supp. 156 (E.D. Va.), aff'd, 379 U.S. 19 (laws requiring various public records to be kept separately by race); *Blackwell v. Harrison*, 221 F. Supp. 651 (E.D. Va.) (racial segregated seating law). Other such laws remain unchallenged. In any event, so long as segregation laws remain on the books they ostensibly reflect the policy of the State to be heeded by its citizens. For discussion of Virginia's official policy of maintaining segregated park and recreational facilities throughout the State, see *Tate v. Department of Conservation and Development*, 133 F. Supp. 53, 55-57 (E.D. Va.), aff'd, 231 F.2d 615 (C.A. 4), cert. denied, 352 U.S. 838; *Wood v. Vaughan*, 209 F. Supp. 106, 111-113 (W.D. Va.) aff'd, *sub nom. Thaxton v. Vaughan*, 321 F.2d 474 (C.A. 4).

decide whether every transaction or relationship which could be characterized as "contractual" brings § 1981 into play, or whether everything which could be characterized as "property" is covered by § 1982. The issue here is more limited. For petitioners merely assert that when an organization holds itself out as offering to the community at large the opportunity through membership to enjoy its services and facilities, the statute grants all citizens the same right as the organization makes available to white citizens as a class, that is, the right to accept the organization's offer to enjoy the benefits of membership. On this basis, there can be no question but that Little Hunting Park, Inc. is subject to the statute. The evidence shows that the association was organized and incorporated for the express purpose, as stated in its certificate of incorporation, of operating "a community park and playground facilities" for "community recreation purposes" (A. 24, 120). Consistent with this purpose, the association's recreation facilities were operated for 11 years until Dr. Freeman applied to use them—on a completely open basis, available to everyone living in the geographic area defined in the by-laws. The association has never exercised any policy of selectivity in passing on applicants for membership and assignment—the sole criterion for approval being residence within the prescribed area. Moreover, membership in the association is not even personal to the individual shareholder, since a person is permitted to own multiple shares for investment purposes, and shares may even be held by corporate bodies such as real estate development companies and churches.

Thus, it is evident that the trial court's characterization of Little Hunting Park as a "private social club" (A. 232, 235) is neither supported by the record nor dispositive of the question whether the association falls under §§ 1981, 1982. Little Hunting Park has never pursued a policy of exclusiveness, the usual characteristic of a private social club. Unlike the conventional social club, fraternal order or similar organization, an individual's personal compatibility with other members is not a qualification for mem-

bership in Little Hunting Park, Inc.²² In conventional social or fraternal organizations—those having as their principal purpose the fostering of fellowship and camaraderie—friendship, tradition and common social, educational or occupational backgrounds play a major role in determining membership eligibility. In the case of Little Hunting Park, Inc., however, the sole determinant of membership eligibility is residence within the specified geographic area; within that area, it “is open to every white person, there being no selective element other than race.” *Evans v. Newton*, 382 U.S. 296, 301. The Court recently held that an establishment was not a private club which “uniformly denied membership” to Negroes but was “open in general” to all “members of the white race.” *Daniel v. Paul*, 37 U.S.L. Week 4481, 4482 (June 2, 1969). As the Fourth Circuit has stated, “[S]erving or offering to serve all members of the white population within a specified geographic area is certainly inconsistent with the nature of a truly private

²²The trial court disregarded fundamental principles of corporation law by attributing to Little Hunting Park's directors the power to create racial or personal qualifications for members. For it is elementary that the powers of the directors to manage a corporation devolve from the purposes for which the corporation is created as set forth in its charter. Hence, in the absence any provision in Little Hunting Park's articles of incorporation derogating from the “community recreation” purposes of the corporation, the directors may no more transform the corporation into a “private social club” by barring the use of its facilities to a certain class of residents of the community than they may divert corporate property to other than recreational purposes; to do so would certainly be *ultra vires*. *Byrne v. Schuyler Elec. Mfg. Co.*, 65 Conn. 336, 31 Atl. 833, 836. Rather, it is mandatory upon the directors to carry out the purposes of the corporation by admitting to membership any applicant who “possesses the qualifications prescribed by the constitution and by-laws of the association.” *Porterfield v. Black Bill & Doney Parks Water Users' Ass'n*, 69 Ariz. 110, 210 P.2d 335, 338-339. And see, *Meyers v. Lux*, 76 S.D. 182, 75 N.W.2d 533, 536; *Morris v. Hussong Dyeing Machine Co.*, 81 N.J. Eq. 256, 86 Atl. 1026, 1028-1029; *Carlson v. Ringgold County Mutual Telephone Co.*, 252 Iowa 748, 108 N.W.2d 478, 484-485.

club." *Nesmith v. Young Men's Christian Ass'n of Raleigh, N.C.*, 397 F.2d 96, 102. See also, *Rockefeller Center Lunch-eon Club, Inc. v. Johnson*, 131 F. Supp. 703, 705 (S.D. N.Y.); *United States v. Richberg*, 398 F.2d 523 (C.A. 5).

Nor is the missing element of selectivity supplied by the fact that under the by-laws of Little Hunting Park the purchase and assignment of shares is conditioned on approval by the board of directors. For the record shows that race is the only factor considered by the directors in exercising their right of approval. In this respect, the situation is no different than in *Shelley v. Kraemer, supra*, 334 U.S. 1, where the property owner similarly did not have an unlimited right to transfer his property. It too was subject to a racially restrictive covenant which was a "condition precedent" to the right of sale. 334 U.S. at 4. The exercise, therefore, by the board of directors of its right to approve assignments and determine membership eligibility on the basis of race amounts to nothing more than the explicit racial covenant in *Shelley*. Thus, whether expressly denominated a racial covenant or a right of approval is of no moment,²³ it is a racial restriction on the use of the association's recreational facilities, and hence is invalid under the 1866 Act.

III. THE FOURTEENTH AMENDMENT IS VIOLATED BY THE DISCRIMINATORY RACIAL POLICY OF LITTLE HUNTING PARK, INC., AND BY THE STATE COURT IN SANCTIONING IT

In addition to the statutory grounds for reversal of the court below, there are compelling constitutional reasons why its decision should not stand. It is well recognized that where facilities are built and operated primarily for public benefit and their operation is essentially a public function, they are subject to the limitations to which the State is

²³ *Lauderbaugh v. Williams*, 409 Pa. 351, 186 A.2d 39; *Mountain Springs Ass'n v. Wilson*, 81 N.J. Super. 564, 196 A.2d 270, 275-277; *Tuckerton Beach Club v. Bender*, 91 N.J. Super. 167, 219 A.2d 529; and see *Harris v. Sunset Islands Property Owners, Inc.*, 116 So.2d 622 (Fla.).

subject and cannot be operated in disregard of the Constitution. *Evans v. Newton*, *supra*, 382 U.S. 296; *Marsh v. Alabama*, 326 U.S. 501; *Amalgamated Food Employees Union Local 390 v. Logan Valley Plaza, Inc.*, 391 U.S. 308.²⁴ Here, the record shows that Little Hunting Park, like Baconsfield Park which was the subject of *Evans v. Newton*, performs the "public function" of providing "mass recreation" (382 U.S. at 302) for members of the community and, accordingly, may not be operated on a racially segregated basis.²⁵ Moreover, the racial policy adopted by Little Hunting Park has an effect on the community which extends substantially beyond what was involved in *Evans v. Newton*. For, rather than being a mere prohibition against the use of a public recreation facility by Negroes, the racial policy of Little Hunting Park, as we have seen *supra*, pp. 23-25, because of its effect on the desirability and value of homes in the area, is very likely to influence the racial composition of the neighborhood which the association serves.

In this respect the instant case is much like the restrictive covenant cases, *Shelley v. Kraemer*, *supra*, 334 U.S. 1, and *Barrows v. Jackson*, *supra*, 346 U.S. 429. Here, as in those cases, a privately organized group of individuals, by asserting its own discriminatory racial policy, is able in effect to impose a racially restrictive system on an entire neighborhood. This leads, of course, to the creation of Negro and white ghettos. The discriminatory racial policy of Little Hunting Park, therefore, no less than the discriminatory policies of those who enter into racial covenants, creates a

²⁴ Accord: *Terry v. Adams*, 345 U.S. 461; *Public Utilities Comm'n v. Pollak*, 343 U.S. 451; *Sinkins v. Moses H. Cone Memorial Hospital*, 323 F.2d 959, 968 (C.A. 4), cert. denied, 376 U.S. 938.

²⁵ In *Evans v. Newton*, the Court found it unnecessary to reach the question of whether Georgia, through legislative enactments, had facilitated the establishment of segregated parks. 382 U.S. at 300-301, n. 3. Virginia's official policy of maintaining segregated parks and recreation facilities is discussed in the *Tate* and *Wood* cases cited *supra*, p. 26, n. 21.

system which is the equivalent of, and has the effect of, a racial zoning ordinance. It is "as if the State had passed a statute instead of leaving this objective to be accomplished by a system of private contracts, enforced by the State." *Bell v. Maryland*, 378 U.S. 226, 329 (dissenting opinion of Justice Black), quoted in *Reitman v. Mulkey*, 387 U.S. 369, 385 (concurring opinion of Justice Douglas). Cf. *Buchanan v. Warley*, 245 U.S. 60.

Finally, it is noteworthy that this case, like *Shelley v. Kraemer*, involves an agreement voluntarily entered into by a white property owner and a Negro attempting to acquire property, with attempted intervention by a third party seeking to prevent performance. *Shelley* and *Barrows* make clear that where, as here, "both parties are willing parties" to such a contract a state court may not give legitimacy to the effort to defeat the contract "on the grounds of the race or color of one of the parties." *Bell v. Maryland*, *supra*, 378 U.S. at 331 (dissenting opinion of Justice Black) (emphasis in original). It is likewise immaterial that the party before the court who relies on the racial restriction asserts it as a basis for seeking affirmative relief or as here, raises it as a defense. There is "no significant difference between the restrictive covenant being used as a basis for an injunction by the proponent of such covenant and its assertion as a defense." *Spencer v. Flint Memorial Park Ass'n*, 4 Mich. App. 157, 144 N.W. 2d 622, 626. Accord: *Clifton v. Puente*, 218 S.W. 2d 272, 274 (Tex. Civ. App.). And see, *Rice v. Sioux City Memorial Cemetery*, 394 U.S. 70, 80 (dissenting opinion).

IV. SULLIVAN'S EXPULSION FROM THE ASSOCIATION MAY NOT BE PERMITTED TO STAND, BECAUSE IT WAS IN RETALIATION FOR HIS EFFORT TO DEAL WITH FREEMAN ON A NON-DISCRIMINATORY BASIS, AS REQUIRED BY §§ 1981, 1982

As well as creating rights for Negroes to be free from discriminatory treatment, 42 U.S.C. §§ 1981, 1982 impose correlative obligations on persons not to deal discriminatorily with Negroes. Thus, if Sullivan had refused to assign share No. 290 to Freeman because of the latter's race he would have violated the statute.

Sullivan was expelled from the corporation, and his two shares were revoked, however, as a direct result of his having dealt with Freeman, as the statute requires, on a non-discriminatory basis, and because he sought to reverse the directors' discriminatory refusal to approve the assignment in order that he could perform his obligation to Freeman under their contract. The expulsion was unquestionably retaliatory, and as "a matter of statutory construction and for reasons of public policy . . . cannot be permitted." *Edwards v. Habib*, 397 F.2d 687, 699 (C.A.D.C.) and cases cited therein at n. 38. Sullivan "was expelled from the association for doing that which the law . . . not only authorizes but encourages." *State ex rel. Waring v. Georgia Medical Society*, 38 Ga. 608, 629, 95 Am. Dec. 408. The action was therefore contrary to public policy, and judicial precedent warrants an order of reinstatement. *Ibid.* Accord: *Malibou Lake Mountain Club v. Robertson*, 219 Cal. App.2d 181, 33 Cal. Rptr. 74, 77; *Spayd v. Ringing Rock Lodge No. 665*, 270 Pa. 67, 113 Atl. 70; *Bernstein v. Alameda-Contra Costa Medical Ass'n*, 139 Cal. App. 2d 241, 293 P. 2d 862, 865; *Thompson v. Grand International Brotherhood of Locomotive Engineers*, 41 Tex. Civ. App. 176, 91 S.W. 834, 838; *Manning v. Klein*, 1 Pa. Super. 210. Cf. *National Labor Relations Board v. Industrial Union of Marine and Shipbuilding Workers*, 391 U.S. 418, 424-425; *Higgins v. American Society of Clinical Pathologists*, 51 N.J. 191, 238 A.2d 665, 671. *Nash v. Florida Industrial Commission*, 389 U.S. 235.

Furthermore, as the Court recognized in *Barrows v. Jackson*, *supra*, 346 U.S. 249, to sanction "punishment" of a person because he has refused to discriminate would be to render nugatory the rights of Negroes to be free from discrimination. The Court stated, "The law will permit respondent to resist any effort to compel her to observe such a covenant . . . since she is the only one in whose charge and keeping reposes the power to continue to use her property to discriminate or to discontinue such use." 346 U.S. at 259. Similarly here, for the law to sanction Sullivan's punishment by expulsion because of his refusal to discriminate would render Freeman's rights under §§ 1981, 1982 illusory indeed. As the *Barrows* case also teaches, there is no question of Sullivan's standing to rely on rights guaranteed by these statutory provisions merely because they literally declare rights for non-whites only. Sullivan has standing to rely on the rights of the Negro, Freeman, since Sullivan is "the only effective adversary" (346 U.S. at 259) capable of vindicating those rights in this litigation resulting from his retaliatory expulsion from the association for having dealt with Freeman nondiscriminatorily.

V. SULLIVAN'S CONSTITUTIONAL RIGHT OF FREE SPEECH WAS VIOLATED BY LITTLE HUNTING PARK, INC. IN EXPELLING HIM BECAUSE HE DISSENTED FROM ITS DISCRIMINATORY RACIAL POLICY, AND BY THE STATE COURT IN SANCTIONING THE EXPULSION

Constitutional considerations provide further warrant for reversal of the state court's affirmance of Sullivan's expulsion from the corporation. If the directors' summary expulsion of Sullivan because of his dissent from their racial policy is allowed to stand, it will have the effect of granting them an immunity from criticism to which they are not constitutionally entitled. By assuming roles of leadership in Little Hunting Park, Inc.—an organization devoted to developing and operating a community recreation facility—the directors necessarily became parties to any matters of public

interest or public controversy in which the association might become involved. It is evident that whatever way the directors had acted with respect to the Freeman assignment, their decision was likely to be a subject for comment and criticism by members of the association, as well as other persons in the community. The directors were not, however, for constitutional reasons entitled to expel Sullivan because he voiced opposition to their discriminatory racial policy. Since, as we have shown above, the public function performed by Little Hunting Park, Inc. makes it subject to constitutional limitations, forfeiture of an individual's rights under the First Amendment may not be made a condition of use of its facilities. *Marsh v. Alabama*, *supra*, 326 U.S. 501; *Amalgamated Food Employees Union Local 590 v. Logan Valley Plaza, Inc.*, *supra*, 391 U.S. at 308; and see *Pickering v. Board of Education*, *supra*, 391 U.S. 563.²⁶

Further, the state court's sanctioning of Sullivan's expulsion from the recreation association because of his criticism of the directors' erection of a racial barrier to the use of its facilities is contrary to this Court's decision in *Curtis Publishing Co. v. Butts*, *supra*, 388 U.S. 130, holding that the First Amendment protects criticism of "public figures" who participate in events of public concern to the community. As was stated there (in the concurring opinion of Chief Justice Warren writing for a majority of the Court) with respect to the urbanized society that we know today:

In many situations, policy determinations which traditionally were channeled through formal political institutions are now originated and implemented

²⁶Courts have frequently been guided by the First Amendment in protecting the right of dissent within voluntary associations. See, e.g., *Crossen v. Duffy*, 90 Ohio App. 252, 103 N.E.2d 769, 778; *Mitchell v. International Ass'n of Machinists*, 196 Cal. App. 2d 796, 16 Cal. Rptr. 813, 816-820; *Madden v. Atkins*, 4 N.Y.2d 283, 151 N.E.2d 73, 78; *Gallaher v. American Legion*, 154 Misc. 281, 277 N.Y.S. 81, 85, *aff'd*, 242 App. Div. 604, 271 N.Y.S. 1012; *Hurwitz v. Directors Guild of America*, 364 F.2d 67, 75-76 (C.A. 2), *cert. denied*, 385 U.S. 971.

through a complex array of boards, committees, commissions, corporations and associations, some only loosely connected with the Government. This blending of positions and power has also occurred in the case of individuals so that many who do not hold public office at the moment are nevertheless intimately involved in the resolution of important public questions or by reason of their fame, shape events in areas of concern to society at large.

Viewed in this context then, it is plain that although they are not subject to the restraints of the political process, "public figures," like "public officials," often play an influential role in ordering society. 388 U.S. at 163-164.

There can be little doubt that Little Hunting Park, Inc. plays the type of public role in the community that is referred to by the Chief Justice, and that the directors of the corporation are "public figures," as he used the term in the *Curtis Publishing* case. Further, as that case holds, it is violative of the First Amendment for the State to lend its judicial processes to vindicate the aggrievement asserted by a public figure against critics of his manner of participating in events of public interest. Applied to the instant case, this means that the Virginia court could not sanction the directors' action in expelling Sullivan from the association merely because in refusing to acquiesce in their discriminatory racial policy, he exercised his right to speak out critically on the issue. By holding that Sullivan's dissent from the association's policy constituted justification for his expulsion, the trial court invoked a standard of state law which had the effect of depriving Sullivan of rights protected by the First Amendment. *Pickering v. Board of Education, supra*, 391 U.S. 563. This clearly is state action falling within the ambit of the Fourteenth Amendment. "The test is not the form in which state power has been applied, but whatever the form, whether such power has in fact been exercised." *New York Times Co. v. Sullivan*, 376 U.S. 254, 265. Accord: *Curtis Publishing Co. v. Butts, supra*, 388 U.S. at

146-155. Further, to permit the state court to sanction Sullivan's expulsion from Little Hunting Park, Inc. for protesting Freeman's exclusion from the community park would be to allow the State to "punish" him for his failure to abide by the directors' determination that he must "discriminate against non-Caucasians in the use of [his] property. The result of that sanction by the State would be to encourage" the use and observance of such racial restrictions on property. *Barrows v. Jackson*, *supra*, 346 U.S. at 254. See also *Reitman v. Mulkey*, *supra*, 387 U.S. at 380-381.

VI. SULLIVAN'S EXPRESSIONS OF DISSENT FROM THE RACIAL POLICY OF LITTLE HUNTING PARK, INC. WERE WELL WITHIN PERMISSIBLE LIMITS OF ACTIVITY FOR A MEMBER OF SUCH AN ASSOCIATION.

The facts of this case leave no doubt, as petitioners urge *supra*, pp. 32-33, that Sullivan's expulsion from Little Hunting Park, Inc. was in retaliation for his attempts to reverse the directors' discriminatory racial policy. Whether Sullivan's right of redress derives from §§ 1981, 1982, or the First and Fourteenth Amendments, in either event, as we show below, his conduct that precipitated his expulsion did not exceed the judicially recognized latitude allowed a member of such a voluntary association who disagrees with its policies. As we also show below, by bringing various false and exaggerated accusations against Sullivan in an attempt to justify his expulsion, the directors further demonstrated their purpose to retaliate against this man for his opposition to their discrimination against Freeman.

A. The judicially approved limits of membership conduct.

Expulsions of individuals from private associations for reasons contravening public policy have frequently been the occasion for courts to exercise jurisdiction to compel reinstatement. Thus, it is recognized as contrary to public policy, and hence beyond an association's power, to discipline a member for exercising a right or performing a

duty as a citizen. In the early case of *State ex rel. Waring v. Georgia Medical Society*, *supra*, 38 Ga. 608, 95 Am. Dec. 408, it was held that a member of a medical society who was expelled for being the surety on a Negro's bond was void as contrary to public policy because the member's action accorded with his responsibility as a citizen. See also, *Manning v. Klein*, *supra*, 1 Pa. Super. 210 (reporting violations by fellow union members of Sunday closing laws is citizen's responsibility and not a valid reason for expulsion from the union). Likewise, the right of a member to participate publicly in political or governmental activity, even though he may take positions that are contrary to the association's official policy has been upheld. *Mitchell v. International Ass'n of Machinists*, *supra*, 196 Cal. App. 2d 796, 16 Cal. Rptr. 813, (campaigning in favor of right-to-work law); *Spayd v. Ringing Rock Lodge No. 665*, *supra*, 270 Pa. 67, 113 Atl. 70 (petitioning legislature for repeal of a law which the union supported); *Abdon v. Wallace*, 95 Ind. App. 604, 165 N.E. 68 (giving testimony contrary to union policy at hearing conducted by Interstate Commerce Commission); *Schneider v. Local Union No. 60*, 116 La. 270, 40 So. 700 (failure to follow union's voting instructions as a member of a public body). Accord: *Ray v. Brotherhood of Railroad Trainmen*, 182 Wash. 39, 44 P.2d 787; *Stein v. Marks*, 44 Misc. 140, 89 N.Y.S. 921. Thus, the general rule is that an association may not exercise its disciplinary powers to inhibit the fundamental constitutional right of citizens "freely to publish their sentiments on all subjects." *Gallaher v. American Legion*, *supra*, 154 Misc. 281, 277 N.Y.S. 81, 85, *aff'd*, 242 App. Div. 604, 271 N.Y.S. 1012.

The right of a member to disagree with an association's policies even to the point of instituting a legal suit against it has also been sustained. Despite the ultimate harm that such action might do to the association, in view of the right of every citizen to use the courts, it has been held that "[t]he prosecution, in good faith, of a legal right for redress even if unsuccessful, is not a ground for expulsion

from an organization . . . " *Malibou Lake Mountain Club v. Robertson*, *supra*, 219 Cal. App. 2d 181, 33 Cal. Rptr. 74, 77. Accord: *Polin v. Kaplan*, 257 N.Y. 277, 177 N.E. 833, 835 ("It was the absolute right of the plaintiffs to bring the suit, whether they could successfully maintain it or not, and they might not be expelled for having so done."). Nor may a member be expelled for testifying as a witness in a legal proceeding adversely to the interests of the association. *Thompson v. Grand International Brotherhood of Locomotive Engineers*, *supra*, 41 Tex. Civ. App. 176, 91 S.W. 834, 838; *Angrisani v. Stearn*, 167 Misc. 731, 3 N.Y.S. 2d 701, 702, *aff'd*, 255 App. Div. 975, 8 N.Y.S. 2d 997.

It is not enough for respondents to defend Sullivan's expulsion on the ground that some of the directors were personally offended by statements that he made about their disapproval of the Freeman assignment. Since Sullivan's actions and statements were not contrary to, or prejudicial to, the basic purposes and objectives of the recreation association, the mere fact that his conduct was offensive, disparaging or even prejudicial to fellow members is not justification for his expulsion. *Alnut v. High Court of Foresters*, 62 Mich. 110, 28 N.W. 802, 804; *Barry v. The Players*, 147 App. Div. 704, 132 N.Y.S. 59; *Bernstein v. Alameda-Contra Costa Medical Ass'n*, *supra*, 139 Cal. App. 2d 241, 293 P.2d 862, 865; *Miller v. Builders' League of New York*, 29 App. Div. 630, 53 N.Y.S. 1016; *Pickering v. Board of Education*, *supra*, 391 U.S. at 571.²⁷ Members have wide latitude in criticizing or seeking to change association policies, even though the judgment and motives of officers or directors may be called into question. Offensive though this may be to the leadership, if a charge of

²⁷ Although in Virginia an association member may be expelled for conduct which violates the "fundamental objects and purposes" of the organization, the mere fact that a member of a retail grocers' association harmed a fellow member in the course of a business transaction was held not to be a ground for expulsion, since it did not violate the fundamental purposes of the association. *Gottlieb v. Economy Stores, Inc.*, 199 Va. 848, 102 S.E.2d 345, 350-352.

improper action is "well founded, an impartial judge might conclude that it was made in the discharge of the highest duty to the [association] and that temporary injury resulting from the expose of wrong-doing was more than offset by the permanent good." *Wilcox v. Supreme Council of Royal Arcanum*, 210 N.Y. 370, 104 N.E. 624, 627. Therefore, "fair criticism" of leadership conduct is the right of a member of a voluntary association no less than "it is the right of every citizen." *Schrank v. Brown*, 192 Misc. 80, 80 N.Y.S. 2d 452, 455; see also, *Yockel v. German American Bund, Inc.*, 20 N.Y.S. 2d 774, 776-777 (Sup. Ct.). And this is so even though the criticism may properly be characterized as "severe", or "couched in exaggerated language" (*Gleiforst v. Workingmen's Sick & Death Benefit Fund*, 37 Misc. 221, 75 N.Y.S. 44, 45), or "ardent and hard-hitting." *Madden v. Atkins*, *supra*, 4 N.Y. 2d 283, 151 N.E. 2d 73, 77. See also *People Ex rel. Ward v. Up-Town Ass'n*, 9 App. Div. 191, 41 N.Y.S. 154, 155; *Mahoney v. Sailors' Union of the Pacific*, 43 Wash. 2d 874, 264 P.2d 1095, 1097; *Reilly v. Hogan*, 32 N.Y.S. 2d 864, *aff'd*, 264 App. Div. 855, 36 N.Y.S. 2d 423; *Crossen v. Duffy*, *supra*, 90 Ohio App. 252, 103 N.E. 2d 769.

As will be shown below, Sullivan's conduct at all times fell within the limits of allowable activity under the foregoing judicial precedents.

B. Most of the charges against Sullivan were false and the rest were exaggerated characterizations by which the directors sought to mask their true intention to expel him because of his dissent from their racial policy.²⁸

The recreation association's board of directors decided on June 11, 1965, that there was "due cause" to expel Sullivan

²⁸The discussion of the evidence that follows is for the purpose of aiding the Court in making an "independent examination of the record" in order to consider the application of "controlling legal principles . . . to the actual facts of the case." *Pickering v. Board of Education*, *supra*, 391 U.S. at 578, n. 2, and cases cited therein.

under the by law provision permitting expulsion for conduct "inimicable [sic] to the corporation's members" (A. 59, 190). The directors reached this conclusion upon realizing the extent of his disagreement with their refusal to approve the share assignment to Dr. Freeman, and that he was seeking support from other members in an effort to secure reversal of their action. They further realized from the highly critical letters which they received from other members of the association (*infra*, n. 36 p. 45) that their authority and judgment were under serious question and scrutiny. Accordingly, Sullivan's "non-acceptance" of the board's decision and continued "harrassment" of board members were cited by the board as the basis for its June 11 decision to seek his expulsion (A. 59, 160). It was thereafter necessary for Sullivan to commence a civil action in the Fairfax County court in order to obtain a postponement of the expulsion hearing so that his attorney could appear with him, and in order to obtain a statement of the specific conduct alleged to constitute the basis for his expulsion.²⁰

²⁰ The settlement stipulation terminating that proceeding was relied on by respondents in the trial court in this case as a defense to the prayer in Sullivan's complaint which sought reversal of the directors' refusal to approve the share assignment to Dr. Freeman (A. 84-85). The stipulation was noted by the trial judge, but he specifically refused to pass on it (A. 233). It is clear, however, that the terms of the stipulation were never met, because, first, there was never a "meeting of the general membership . . . held pursuant to [Sullivan's] petition calling the same" (A. 84). The crux of Sullivan's petition was that the membership should meet and hear Dr. Freeman, a suggestion earlier made by Father Walsh, but which the board of directors had rejected. However, the evidence shows that the membership meeting held on July 29, 1965, had an agenda substantially different from the one contained in Sullivan's petition, and the corporation's membership, as such, never voted because the meeting was too disorderly and participated in by many people who were not members. (Pl. Exs. 21, 42, A. 75, 132-133, 82-85, 116, 151-153, 168-171). Secondly, the stipulation only referred to "the assignment of the membership for this [1965] swimming year," and in no way barred Sullivan's continuing effort, by legal action or otherwise, to obtain

In an effort to justify Sullivan's expulsion and to thwart his efforts and those in agreement with him, the directors drew up a statement of charges against Sullivan. But as revealed by the record, their allegations are shown to be either completely false, or exaggerated and distorted characterizations of his actions taken to obtain rescission of the association's racial policy. By resort to falsehoods and overstatements, the directors revealed their true objective, which was to compose a set of charges to serve as a pretext for expelling Sullivan because of his dissent from their discriminatory action.

The allegations against Sullivan fall into several categories, all of which relate to his reaction against the association's racial policy. First, he was charged with engaging in "harassment" of the members of the board by means of "numerous unfriendly telephone calls" that he made and caused others to make in which the directors were accused of "hatred and bigotry" (A. 73-74, 135, 181). However, this accusation is shown by the evidence to be without foundation in fact. Sullivan denied making "unfriendly" or "harassing" telephone calls to directors or calls in which he accused them of "hatred and bigotry" (A. 73-74). In response to pre-trial interrogatories, only two directors were identified by respondents as recipients of any calls: Mr. Lennon and Mrs. Moore, the association president. Lennon admitted in testimony that Sullivan made no calls to him in which he was accused of "hatred and bigotry," and stated that at most Sullivan was "impatient on occasion" (A. 135-136, 153-154). Mrs. Moore testified to no "harassing" telephone calls made by Sullivan to her. In fact, she described only one telephone conversation that she had

approval of the assignment for 1966 and subsequent swimming years. Finally, the stipulation makes no reference to, and therefore does not affect Sullivan's prayer to enjoin continuation of the association's discriminatory racial policy because of its effect on the marketability of his real estate; nor does the stipulation affect Sullivan's cause of action arising from expulsion from the association. Further, the stipulation has no effect on Freeman's separate legal action.

with Sullivan, a call that *she* placed to him, and the most that she said about it was that he was "rude" because he interrupted her, so *she* hung up on him (A. 162, 58, 113).³⁰ Mrs. Moore mentioned two other telephone calls that she received during this period, one from Dr. Freeman and one from James Sutherland, a member of the association, both of whom called about arrangements for Dr. Freeman to meet the board of directors, a suggestion that had been made by Father Walsh but was rejected by Mrs. Moore (A. 162, 164). It is undisputed that neither caller accused the directors of "hatred and bigotry" (A. 108-111, 164).³¹

The second category of charges against Sullivan arose from the May 28, 1965, visit to his home by board representatives Lennon, Hanley and Egger. It was alleged that

³⁰ Another charge against Sullivan is that he used "abusive" language to Mrs. Moore during that telephone conversation (A. 58, 165). This charge was revealed as baseless. For, upon being asked to explain it, Mrs. Moore referred to an exchange in the course of her conversation with Sullivan about the attitude of their parish priest, Father Walsh, toward the swimming pool racial issue. Expressing indifference to Father Walsh's views, Mrs. Moore stated rather vehemently that he did not "mean a thing" to her (A. 58, 113, 162, 165). Reacting partly in surprise to that comment, Sullivan, according to Mrs. Moore, then stated that "the action of the Board" in denying the assignment to Freeman was "immoral", "illegal" or "evil" (A. 162, 165). This language, used as it was in reference to the Board's action rather than Mrs. Moore personally, is not what would normally be characterized as "abusive."

³¹ Although the charge against Sullivan was that he was responsible for a campaign of "harassing" telephone calls to *directors* of the association, respondents, in answer to pre-trial interrogatories, made a last-minute attempt to bolster their case by naming a person who was *not a director* as one who allegedly received such a call from Sullivan (A. 74-75, 135-136). The person named, Mrs. Mary Simmons, did not testify at the trial; no evidence was introduced concerning any call that she received, nor the identity of any caller; Sullivan denied ever calling her; and finally, Mrs. Moore admitted on cross-examination that no call to Mrs. Simmons by Sullivan was even considered at the time the directors voted to expel him (A. 74, 136).

on that occasion he accused the board of directors of practicing "bigotry and hatred" and that he "cast doubt on the veracity" of the three representatives who visited him. It was further alleged that he was "insulting and rude" because he made statements to the effect that he was "ashamed" of the three representatives and that the board's action in disapproving the Freeman assignment was "evil", "immoral" and "shocking" (A. 54, 181-182, 186).

While Lennon, Hanley and Egger each testified at the trial, they failed to support the allegation that Sullivan accused the board of "bigotry and hatred."³² Nor is there record support for the allegation that Sullivan "cast doubt on the veracity" of the board representatives. As his testimony shows, Sullivan disapproves of racial discrimination, and was amazed when he learned from the board delegates that Dr. Freeman had been rejected solely because of his race. He found it particularly hard to believe the assertion of the delegation that the entire board and association membership unanimously backed the rejection, for Sullivan knew that he and others who shared his views on racial discrimination strongly disagreed (A. 52). In light of the surprising circumstances presented to him, Sullivan testified, "I did express an inability to believe, which I think is perfectly normal" (A. 54). As he further explained, "When one is confronted with an incredible situation . . . that you may find difficult or impossible to believe . . . [it] does not necessarily reflect on the veracity of the person who may relate it" (*ibid.*). It is plain, therefore, that whatever Sullivan's statement of disbelief might have been, it was at most an expression of amazement, and it distorts the common understanding of speech to construe such an incident as

³²The testimony of these three men and Mr. and Mrs. Sullivan concerning the May 28 meeting appears in the record as follows: Sullivan (A. 51-53, 86-88); Mrs. Sullivan (A. 112-113); Hanley (A. 149-150); Lennon (A. 150-151); Egger (A. 155-156).

"casting doubt on the veracity" of the person to whom the statement is made.³³

Unquestionably, Sullivan was shocked and ashamed at what he considered the board's immoral action in rejecting Dr. Freeman because of his race. Sullivan had contracted with Dr. Freeman to assign the swimming pool share to him, and when Hanley related the board's offer to buy that share, Sullivan expressed his unwillingness to breach his agreement by rejecting the offer out of hand since, as he testified "I felt selling a share with the condition of racial discrimination attached to it was cooperating in an evil" (A. 52). Without doubt, Sullivan's reaction to the situation with which he was confronted and the words he used on that occasion are no different than what could be expected from vast numbers of persons, given the same circumstances.³⁴ Further, Sullivan, a United States government employee, testified that on May 26, 1965, two days before the delegation's visit to his home, he had received a copy of a memorandum from President Lyndon Johnson to all government employees which stated that the President "expected them to do all in their power to ensure the equal treatment of every citizen regardless of race, creed or national origin" (A. 60-61. See also, Pl. Ex. 14; A. 63,

³³Sullivan's reaction was shared by Rev. John M. Wells, a Unitarian minister in the Little Hunting Park area, who testified that he, along with others with whom he discussed the matter, found the discrimination against the Freeman family "almost unbelievable" (A. 174).

³⁴Sullivan also testified that his actions were motivated by his religious convictions. As the record shows, Sullivan is a Catholic who viewed the disapproval of the Freeman assignment as a "problem of injustice" (A. 56, 60). Leaders of Sullivan's church and particularly Bishop Russell, head of the Diocese of Richmond, which includes Northern Virginia, have characterized racial discrimination as "primarily a moral and religious problem (A. 61-63, 85-86, 94). Information to this effect, and of the Bishop's personal efforts to combat racial discrimination, particularly in the field of housing, have been widely publicized, not only in the Catholic press, but in newspapers of general circulation, as well (*ibid.*).

191-192). Accordingly, Sullivan's reaction to the encounter with the corporation's representative on May 28 was neither unusual nor surprising.³⁵ He acted and spoke consistently with the principles taught by his own and other churches, and pursuant to the specific mandate of President Johnson. The words used by Sullivan are part of the vocabulary that has come to be associated with racial discrimination and reflected his sincere views on the subject. Finally, the words were no stronger, in fact they were relatively temperate, in comparison to those used by other members of the association when they learned of the directors' discrimination against the Freemans because of their race.³⁶

³⁵Hanley specifically denied that Sullivan was emotional on that occasion. He testified that Sullivan "kept things under control pretty well that way" (A. 150).

³⁶See particularly the letter of Paul Scott Forbes, who, in a letter to Mrs. Moore dated June 10, 1965, wrote (A. 139-140):

My wife and I, members of Little Hunting Park, Inc. were shocked and dismayed by the narrow minded and totally unjustifiable action of the board in arbitrarily excluding a qualified membership holder on the basis of race . . . This *flagrantly unchristian violation of the scriptural admonition, "Do unto others as you would have them do unto you,"* cannot be justified on any grounds and *casts an ugly shadow of bigotry* on our community, which is undeserved . . . Even if this were not so, the Board's action is *un-American* and sullies the memory of the thousands of *Americans who died in the revolution, in the Civil War and in World War II* to preserve the idea that all men are created equal, and that human rights must always come before property rights . . . I pledge to take all measures possible—including legal ones if necessary to attain these ends. [Emphasis added.]

Another letter to Mrs. Moore from a member of the association, Mrs. Richard C. Ellis, dated June 10, 1965, stated (A. 140-141):

I see no mad rush to move out of Bucknell since the Freemans moved in, no empty houses, no panic . . . The houses on Beacon Hill Road and those behind Rollins Drive add to the appearances of Bucknell and are all lived in and kept neatly by Negroes. The school has had no problem integrating—why make an issue of the pool? . . . I have met Ted and Laura Freeman and their little boys and I not only

A third group of charges against Sullivan stems from a letter that he wrote on June 25, 1965, to Father Thomas J. Cassidy, Director of Catholic Charities for Northern Virginia, concerning his encounter with racial discrimination. (Pl. Ex. 16; A. 64-67, 193-198, 181-182). The allegation was again made that Sullivan accused the board of directors of practicing "bigotry and hatred." These words do not appear anywhere in the letter, however, thus giving the lie to the charge (A. 181, 186, 193-198).³⁷ Sullivan wrote the June 25 letter, as well as a follow-up letter on July 1, to Father Cassidy on the recommendation of Father Carl Zetserburg, Sullivan's former pastor (A. 64, 67-69, 88-89, 182). Father Cassidy, is charged by Bishop Russell with responsibility for problems involving race relations in the Northern Virginia area of the diocese (A. 64). Sullivan, in both his letters of June 25 and July 1, in substance asked the clergyman to exercise his moral influence in an effort to combat the racial discrimination which was being practiced by the board of directors of Little Hunting Park, Inc. Copies of the letters were sent by Sullivan to the two local priests in whose parishes Little Hunting Park is located and to Father John McMahon in Richmond, who has an overall role in the diocese with respect to matters of "social justice" (A. 88).

Sullivan, in writing the two letters, with copies sent only to Catholic clergymen, used, as would be expected, the vocabulary previously discussed, which has come to be asso-

like them, but I think they are an asset to the community, and therefore eligible to swim in our pool.

Mrs. Moore acknowledged receiving a number of letters expressing disapproval of the board's action (A. 137). Five such letters, including the two quoted above, are included in the record as Plaintiffs' Exhibits 44-48.

³⁷The directors also alleged that Unitarian Minister John M. Wells was a recipient of Sullivan's June 25 letter (A. 181, 186). The uncontradicted evidence based on the testimony of both Sullivan and Reverend Wells shows that the letter was never sent to Wells and he never saw a copy of it (A. 65, 172).

ciated with racial discrimination. He noted, among other things, that Bishop Russell had referred to racial discrimination as a "real moral evil," and in the July 1 letter mentioned the Catholic Church's view that racial discrimination is a "sin" (A. 66, 68-69). The context in which these terms were used and the religious personages to whom they were addressed provide the only proper measure for assessing Sullivan's conduct in writing the letters. It cannot be doubted that he wrote them out of sincerity of conviction, and with no thought of maligning any director or even singling out any individual for criticism. His remarks were concerned solely with the subject of racial discrimination and the improper action which he believed the board as a body had taken. And it has not been alleged, nor can it be, that either of the letters contains a single word of untruth. Their only vice in the directors' eyes was that Sullivan had presumed to criticize the board's action and revealed himself as wanting to reverse the discriminatory racial policy which it had adopted.

The directors, therefore, angered by Sullivan's efforts to overturn their action and seeking to vindicate themselves, alleged as one of the grounds for his expulsion the fact that one of the parish priests to whom he sent a copy of his June 25 letter turned out, coincidentally, to be pastor of the church where Mrs. Moore was employed (A. 66, 182, 186). It is undisputed that at the time Father Joseph Wingler was sent a copy of the letter by Sullivan, the latter had no knowledge that Mrs. Moore was an employee of St. Mary's Church, and indeed, he did not even know of her religious affiliation (A. 66-67). Also, contrary to the implication conveyed by the charge against Sullivan, it is undisputed that Mrs. Moore's employment was not adversely affected in any way by Father Wingler's receipt of the letter, and that she still works for St. Mary's Church (A. 67, 134-135). When Father Wingler received the letter, he showed it to Mrs. Moore, mentioned that its subject was "none of his business," and showed his lack of interest or

concern by reading the letter once and throwing it away (A. 162, 95).³⁸

Paul Sullivan's June 25 letter to Father Cassidy served still another purpose for the directors. Seizing on the fact that Sullivan sent a copy to Father Walsh, his own pastor, the directors alleged that this created a "strained relationship" between Father Walsh and the corporation (A. 67, 182, 186-187). This charge was refuted completely, however, by the signed statement of Father Walsh offered in Sullivan's behalf at the August 17 expulsion hearing. Father Walsh pointed out that there was in fact no relationship between himself and the association to strain, but even if there had been one, the letter would not have strained it (A. 67, 96-97).

Two final allegations against Sullivan hardly merit serious discussion, but they typify the scatter-gun attack that was made on him in the effort to justify his expulsion from the association. Thus, it was charged that while circulating the petition for the special membership meeting that he wanted convened, Sullivan used "violent and abusive language to members of the corporation who refused to sign" the petition (A. 76, 182, 187). By way of specification for this charge, the only member to whom Sullivan was alleged to have used such language was Alleen Winters. Mrs. Winters did not testify, and there was no evidence of any kind offered in the trial court to support this charge. On the other hand, Sullivan testified in detail about his visit to Mrs. Winters' home, as well as his prior close relationship of some 10 years standing with her and her husband (A. 75-77). Sullivan categorically denied using "violent and abu-

³⁸ At the hearing on Sullivan's expulsion, a signed statement by Father Wingler was submitted to the board, stating as follows (A. 95, 98):

This is to certify that Mr. Sullivan's letter of June 25, 1965, to Father Cassidy, of which I received a copy, was in no way detrimental to the employment status of Mrs. Virginia Moore, who works for me.

sive" language to her (A. 77). Additionally, Father Walsh, who happened to be in Mrs. Winters' home when Sullivan visited her, denied in his signed statement submitted to the board at the time of the expulsion hearing that Sullivan had used such language (A. 77, 96-97).

Finally, the directors alleged that Sullivan, by his efforts to reverse their discrimination against Freeman and his threat to bring appropriate legal action, was responsible for financial loss to the directors because they were required to retain counsel and to hold "additional meetings", thereby incurring "additional and necessary transportation expense" (A. 77-79, 182, 187). As shown *supra*, pp. 37-38, the bringing of a court proceeding against an association by a member is not a proper ground for expulsion. That this charge also lacks evidentiary foundation is shown by the fact that the by-laws of the corporation require the directors to meet once a month, and the record shows that except for the special membership meeting of July 29, 1965, and the expulsion hearing of August 17, 1965, the directors held only one meeting each month during 1965 (A. 31, 78, 165). Further, there was nothing unusual about the transportation expenses incurred by the directors in attending these meetings, for they were all held at directors' homes, and all of the directors reside in the same general neighborhood—no one living more than one mile from the Little Hunting Park swimming pool (A. 78-79).

From the foregoing it is clear beyond any question that Sullivan's expulsion from Little Hunting Park, Inc. was in reprisal for his seeking to overturn the directors' discriminatory racial policy. Because he refused to acquiesce in their disapproval of the assignment to Freeman, the directors seized on some of his actions and statements, which particularly angered them, added others of their own invention, and with this as the basis decided that they could justify his expulsion from the association.³⁹ As we have seen,

³⁹Significantly of the various charges against Sullivan, only two involved incidents occurring before June 11, 1965, the date of the

many of the charges against Sullivan are altogether false. The rest relate to wholly legitimate means by which he expressed his disagreement with the directors' racial policy. As a dissenting member of the association, his actions and statements were at all times within the judicially recognized bounds of permissible activity.⁴⁰ See discussion *supra*, pp. 36-39. Clearly the drafting of the various specious accusations against Sullivan evidence the directors' retaliatory motive in expelling him.

VII. THE PETITIONERS HAVE VALID CLAIMS FOR DAMAGES

In each suit upon which this proceeding is based, damages are sought in the amount of \$15,000. In *Jones v. Mayer Co.*, the Court refrained from passing on whether the plaintiffs could recover damages for the violation that was found of § 1982. 392 U.S. at 414-415, n. 14. Whether

directors' decision that there was "due cause" for expelling him (A. 59, 190). Those incidents were the May 28 visit of the three association delegates to Sullivan's home and Sullivan's telephone conversation of June 7 with Mrs. Moore (*supra*, pp. 41-42). Those two incidents demonstrated to the directors Sullivan's "non-acceptance" (A. 59, 190) of their decision regarding the assignment to Freeman. Hence, it is clear that all the rest of the charges leveled against Sullivan when he was expelled in August were afterthoughts designed to justify the action that had been decided upon two months previously.

⁴⁰In any event, "little weight" should be given to the board of directors' determination that Sullivan's conduct was "inimicable" [sic] to the corporation's members in view of the "obvious defects" from a procedural standpoint in the hearing granted him prior to his expulsion. *Pickering v. Board of Education*, *supra*, 391 U.S. at 578-579, n. 2. As in *Pickering*, "the trier of fact was the same body that was also the victim of appellant's statements and the prosecutor that brought the charges aimed at securing his dismissal . . . [; and] [t]he state courts made no independent review of the record." *Ibid.* Further, as noted *supra*, p. 11, Sullivan was not permitted at the expulsion hearing to learn the identity of his accusers or to question them, and he was denied permission to have a reporter present. See generally, Comment, *Judicial Control of Actions of Private Associations*, 76 Harv. L. Rev. 983, 1029-1037 (1962); 6 Am. Jur. Associations § 36.

this proceeding is governed by §§ 1981, 1982 or provisions of the Constitution, it is clear, in any event, that damages may be awarded. "[W]here federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." *Bell v. Hood*, 327 U.S. 678, 674, and cases there cited. See also, *Texas & Pacific Ry. Co. v. Rigsby*, 241 U.S. 33, 39-40; *Steele v. Louisville & Nashville R. Co.*, 323 U.S. 192, 207; *Wyandotte Transportation Co. v. United States*, 389 U.S. 191, 202, 204; 42 U.S.C. § 1988. Here petitioners claims for damages are based on constitutional and statutory provisions which "should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." *Monroe v. Pape*, 365 U.S. 167, 187. Familiar factors justifying compensatory and punitive damage liability are therefore appropriate for consideration. *Jones v. Mayer, supra*, 392 U.S. at 414-415, n. 14.⁴¹ However, state rules of damages that tend to defeat the federal civil rights at issue must give way to the "federal common law of damages". *Basista v. Weir, supra*, 340 F.2d at 87; *Caperci v. Huntoon*, 397 F.2d 799, 801 (C.A. 1), cert. denied, 393 U.S. 940. Thus, there need only be adoption of those state rules that will "effectuate the broad policies of the civil rights statutes." *Brazier v. Cherry*, 293 F.2d 401, 408 (C.A. 5), cert. denied, 368 U.S. 921; *Sherrod v. Pink Hat Cafe*, 250 F. Supp. 516, 519-520 (N.D. Miss.). Because precedents are few, petitioners respectfully urge that the Court, in its decision

⁴¹ In addition to such compensatory and punitive damages as may be justified, it has been suggested that in civil rights cases arising out of racial discrimination a plaintiff should be entitled to have included in his award as a third element of damages an amount "for deprivation of civil rights". Comment, *Civil Actions for Damages Under the Federal Civil Rights Statutes*, 45 Tex. L. Rev. 1015, 1033 (1967). Cf. *Nixon v. Herndon*, 273 U.S. 536; *Lane v. Wilson*, 307 U.S. 268; *Myers v. Anderson*, 238 U.S. 368; *Basista v. Weir*, 340 F.2d 74, 87-88 (C.A. 3); *Washington v. Official Court Stenographer*, 251 F. Supp. 945, 947 (E.D. Pa.); *Rhoads v. Horvat*, 270 F. Supp. 307, 309-310 (D. Colo.) and cases cited.

herein, delineate standards for the granting of monetary relief, for the guidance of the court below. Among the relevant factors, petitioners submit, are the following:

The Freeman family's claim against respondents for \$15,000 damages is justified by the infringement the Freemans suffered of federally guaranteed rights; their exclusion for two years from Little Hunting Park's recreation facilities including its swimming pool, with the accompanying expense and inconvenience of having to go elsewhere to find comparable facilities; and the physical and emotional injury to them resulting from the racial discrimination that they suffered with its attendant embarrassment, humiliation, indignity and loss of social prestige in the community (A. 206-216). The record shows that when the Freemans first moved into the predominantly white neighborhood where Little Hunting Park is located, they attracted little attention and were hospitably received. However, the directors' racially motivated refusal to approve the pool assignment to them precipitated a build-up of community hostility toward the Freemans and they soon were ostracised by neighbors who had previously been friendly, and were subjected to racial slurs and various forms of harrassment (A. 210, 212, 213-214). The Freemans' two young sons, ages 6 and 5, became isolated from children who had previously been their playmates in the neighborhood (A. 214). The aggravation and emotional strain resulting from respondents' discrimination against the family caused Mrs. Freeman to have a temporary nervous breakdown and interfered with Dr. Freemans' performance of his duties as a federal government employee (A. 208-211, 214-216). The psychological and emotional injury resulting from the racial discrimination against the Freemans is plainly a factor meriting consideration in determining compensatory damages. *Solomon v. Pennsylvania R. Co.*, 96 F. Supp. 709, 712 (S.D. N.Y.); *Anderson v. Pantages Theater Co.*, 114 Wash. 2d, 194 P. 813, 815-816. Cf. *Brown v. Board of Education*, 347 U.S. 483, 493-494; *Browning v. Slenderella Systems of Seattle*, 54 Wash. 2d 440, 341 P.2d 859, 863-866; *McArthur*

v. Pennington, 253 F. Supp. 420, 430 (E.D. Tenn.); *Antelope v. George*, 211 F. Supp. 657, 660 (D. Idaho).

The Sullivan family's claim for \$15,000 damages is grounded on Paul Sullivan's unlawful expulsion from the association; the resulting exclusion of the family from Little Hunting Park for the past three years with the necessity of having to go elsewhere for swimming and recreational facilities; and the damage to reputation, as well as physical and emotional strain, that were suffered by the Sullivans as the result of the expulsion proceeding initiated by respondents (A. 78-82, 113-115). In the recent case of *Simmons v. Avisco, Local 713, Textile Workers Union of America*, 350 F.2d 1012 (C.A. 4) a suspended member of a labor union sued in the District Court of the Eastern District of Virginia for reinstatement and damages. Based on the trial court's finding that he had been wrongfully suspended, the plaintiff was ordered reinstated, and awarded \$15,000 compensatory damages for injury to reputation and resulting mental anguish. The court of appeals, in affirming, noted, as one of the justifications for the damages award, the harassment of the plaintiff, following his suspension, through anonymous and abusive telephone calls to his home. 350 F.2d at 1018. There is undisputed evidence of similar harassment of Sullivan in the instant case (A. 82, 114-115).

In *Jones v. Mayer Co.*, *supra*, the Court left open the question whether punitive damages may be awarded under the Civil Rights Act of 1866, but referred to authorities (302 U.S. 414-415, n. 14) indicating that they are appropriate where warranted by the facts of the case, citing, *Philadelphia, Wilmington & Baltimore R. Co. v. Quigley*, 21 How. 202, 213-214; *Barry v. Edmunds*, 116 U.S. 550, 562-565; *Wills v. Trans World Airlines, Inc.*, 200 F. Supp. 360, 367-368 (S.D. Calif.). See also, *Hague v. Committee for Industrial Organization*, 101 F.2d 774, 789 (C.A. 3), modified on other grounds, 307 U.S. 496; *Antelope v. George*, *supra*, 211 F. Supp. 657, 660 (N.D. Idaho); *Rhoads v. Horvat*, *supra*, 270 F. Supp. 307 (D. Colo.).

In the instant case, punitive damages are proper in view of the malice that may be implied from respondents' hostile and insulting conduct toward the Freemans because of their race, and in view of the animus and vindictiveness that motivated the directors in expelling Sullivan from the association. Punitive damages are justified "whether the wrongful act is done with a bad motive, or with such gross negligence as to amount to misconduct, or in a manner so wanton or reckless as to manifest a wilful disregard of the rights of others . . ." *Franklin Plant Farm Inc. v. Nash*, 118 Va. 98, 86 S.E. 836, 842; and see *Bolton v. Vellines*, 94 Va. 393, 26 S.E. 847, 850; *Baker v. Marcus*, 201 Va. 905, 114 S.E. 2d 617. As we have shown *supra*, pp. 39-50, the charges brought against Sullivan as justification for his expulsion consisted almost entirely of demonstrable untruths and gross exaggerations designed to mask the directors' antagonism toward him because he refused to acquiesce in their discrimination against Freeman and sought to reverse it. His expulsion under such circumstances, we submit, supports the awarding of punitive damages against respondents. See, e.g., *International Brotherhood of Boiler-makers v. Braswell*, 388 F.2d 193, 199-201 (C.A. 5).⁴²

CONCLUSION

For the reasons stated, it is respectfully submitted that the Court should render a decision for petitioners. In that event, it would appear that another remand to the Supreme Court of Appeals of Virginia would be futile, in view of

⁴²The individual directors of Little Hunting Park, Inc., respondents herein, who participated in the discrimination against Dr. Freeman and the expulsion of Paul Sullivan are liable, along with the corporation, for damages based on their roles in the wrongful conduct. See *National Cash-Register Co. v. Leland*, 94 Fed. 502, 508-511 (C.A. 1) cert. denied, 175 U.S. 724; *Trounstone v. Bauer, Pogue & Co.*, 144 F. 2d 379, 382 (C.A. 2) cert. denied, 323 U.S. 777; *Hitchcock v. American Plate Glass Co.*, 259 Fed. 948, 952-953 (C.A. 3); *Lobato v. Pay Less Drug Stores, Inc.*, 261 F.2d 406, 408-409 (C.A. 10); *American Universal Insurance Co. v. Scherfe Insurance Agency*, 135 F. Supp. 407, 415-416 (S.D. Iowa).

that court's insistence that it does not have jurisdiction over the proceeding. Therefore, petitioners respectfully suggest that the Court treat this proceeding as one on a writ of certiorari to the Circuit Court of Fairfax County, Virginia, where the cases were tried. See *Callender v. Florida*, 383 U.S. 270, 380 U.S. 519; *Adam v. Saenger*, 303 U.S. 59, 61. Cf. *Naim v. Naim*, 350 U.S. 891; on remand, 197 Va. 734, 90 S.E. 2d 849, appeal dismissed, 350 U.S. 985, where in circumstances similar to those presented here, the Supreme Court of Appeals of Virginia successfully evaded compliance with a mandate of this Court. Further, it would be appropriate for this Court to formulate an order reversing the judgments of the courts below, and directing the Circuit Court to enter an appropriate decree, including provision for such damages as that court may fix. See *Stanley v. Schwalby*, 162 U.S. 255, 279-283; 28 U.S.C. § 2106; 28 U.S.C. § 1651 (a).⁴³

Respectfully submitted,

Allison W. Brown, Jr.
Suite 501, 1424-16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Robert M. Alexander
2011 S. Glebe Road
Arlington, Virginia 22204

Attorneys for Petitioners

Of Counsel:

Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019
June 1969

⁴³"The power to enter judgment and, when necessary, to enforce it by appropriate process, has been said to be inherent in the Court's appellate jurisdiction." *Fay v. Noia*, 372 U.S. 391, 467 (dissenting opinion of Justice Harlan). See *Williams v. Bruffy*, 12 Otto 248, 255-256; *Tyler v. Magwire*, *supra*, 17 Wall. at 289-293; *Martin v. Hunter's Lessee*, *supra*, 1 Wheat. at 361; *McCulloch v. Maryland*, 4 Wheat. 316, 437; *Gibbons v. Ogden*, 9 Wheat. 1, 239; *Kreshik v. St. Nicholas Cathedral*, 363 U.S. 190, 191. Cf. *N.A.A.C.P. v. Alabama*, *supra*, 377 U.S. at 310.

APPENDIX

STATUTES

42 U.S.C. Section 1981. Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. R.S. § 1977.

42 U.S.C. Section 1982. Property rights of citizens

All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property. R.S. § 1978.

CONSTITUTION OF THE UNITED STATES

Article VI

This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

* * *

AMENDMENTS

Article I

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the

right of people peaceably to assemble, and to petition the Government for a redress of grievances.

* * *

Article XIII

Section 1. Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

Section 2. Congress shall have power to enforce this article by appropriate legislation.

* * *

Article XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

* * *

RULES OF THE SUPREME COURT OF APPEALS OF VIRGINIA

Rule 5:1 The Record on Appeal

Sec. 3. Contents of Record

* * *

(f) Such a transcript or statement not signed by counsel for all parties becomes part of the record when delivered to the clerk, if it is tendered to the judge within 60 days and signed at the end by him within 70 days after final judgment. It shall be forthwith delivered to

the clerk who shall certify on it the date he receives it. Counsel tendering the transcript or statement shall give opposing counsel reasonable opportunity to examine the original or a true copy of it. The signature of the judge, without more, will be deemed to be his certification that counsel had the required notice and opportunity, and that the transcript or statement is authentic. He shall note on it the date it was tendered to him and the date it was signed by him.

* * *

FILE COPY

FILE

JUL 15 1

JOHN F. DAVIS,

**IN THE
SUPREME COURT OF THE UNITED STATES**

October Term, 1968

No. ~~929~~ 33

PAUL E. SULLIVAN, ET AL., *Petitioners*

v.

LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., *Petitioners*

v.

LITTLE HUNTING PARK, INC., ET AL.

**On Writ of Certiorari to the
Supreme Court of Appeals of Virginia**

BRIEF FOR THE RESPONDENTS

**GERALD M. O'DONNELL
100 South Royal Street
Alexandria, Virginia 22314
*Of Counsel***

**JOHN CHAS. HARRIS
1500 Belle View Boulevard
Alexandria, Virginia 22307
*Attorney for Respondents***

INDEX

Questions Presented.....	1
Little Hunting Park, Inc.....	1
Parties.....	3
A Federal Question?.....	4
The Question Is Moot.....	11
The First Amendment, Fourteenth Amendment and The Civil Rights Act of 1866 — Sullivan.....	14
The Thirteenth Amendment, Fourteenth Amendment and The Civil Rights Act of 1866 — Freeman.....	19
Conclusion.....	24

CITATIONS

Amalgamated Ass'n, etc. v. Wisconsin Employment Relations Board, 340 U.S. 416, 71 S.Ct. 375.....	11
Ashwander v. Tennessee Valley Authority, 297 U.S. 288, 56 S.Ct. 466, 80 L. Ed. 688.....	16
Bacigalupo v. Fleming, 199 Va. 827, 102 S.E. 2d 321.....	8
Barrows v. Jackson, 346 U.S. 249, 73 S.Ct. 1031.....	16
Cook v. Holsum Bakeries, Inc., 207 Va. 815, 153 S.E. 2d 209.....	8
Curtis Publishing Co. v. Butts, 388 U.S. 130.....	21
Daniel v. Paul, 37 U.S.L. Week 4481, 4482.....	4
Dixon v. Duffey, 342 U.S. 33, 72 S.Ct. 1073.....	6

Doremus v. Board of Education, 342 U.S. 429, 72 S.Ct. 394.....	11
Douglas v. State of Alabama, 380 U.S. 415, 85 S.Ct. 1072.....	6
Ex Parte Baez, 177 U.S. 378, 20 S.Ct. 673.....	11
Herb v. Pitcairn, 324 U.S. 118, 65 S.Ct. 459.....	5
Jones v. Alfred H. Mayer Co., 392 U.S. 409, 88 S.Ct. 2186, 20 L. Ed. 2d 1189.....	10, 12, 20, 22, 23
McKnett v. St. Louis & S.F.R. Co., 292 U.S. 230, 54 S.Ct. 690, 78 L. Ed. 1227.....	6
Monroe v. Pate, 365 U.S. 167, 81 S.Ct. 473.....	13
NAACP v. State of Alabama, 357 U.S. 449, 78 S.Ct. 1163.....	6
Nichol v. Cole, 256 U.S. 222, 41 S.Ct. 467.....	9
Ocean Accident Corp. v. Haley, 158 Va. 691, 164 S.E. 538.....	8
Snead v. Commonwealth, 200 Va. 850, 108 S.E. 2d 399.....	8, 10
Sullivan v. Little Hunting Park, Inc., 392 U.S. 657.....	10
United States v. Alaska S.S. Co. 253, U.S. 113, 40 S.Ct. 448.....	11
Wolfe v. State of North Carolina, 364 U.S. 177, 80 S.Ct. 1482.....	9
Young v. Ragen, 337 U.S. 235, 69 S.Ct. 1073.....	6

STATUTORY AND CONSTITUTIONAL

First Amendment, United States Constitution.....	4, 14, 16
Thirteenth Amendment, United States Constitution.....	3
Fourteenth Amendment, United States Constitution.....	3, 4
Civil Rights Act of 1866, 42 U.S.C. §1981, 1982.....	3, 4, 12, 19, 21
Civil Rights Act of 1964, 42 U.S.C. §2000 et seq.....	4, 13, 21
28 U.S.C. 1257(3).....	5
42 U.S.C. §1983.....	12
Constitution of Virginia §88.....	6
Code of Virginia, 1919, §6252.....	8
Code of Virginia, 1950, §8-1.1.....	7
Rules of Court, Supreme Court of Virginia, Rule 5:1 §3(f).....	5, 7, 8, 10
6 AmJur 2d Associations and Clubs §18.....	13, 22
7 C.J.S. Associations §23, page 56.....	13, 20

MISCELLANEOUS

Webster's New Collegiate Dictionary, Second Edition.....	14
Congressional Globe Vol. 71, pps 522, et seq.....	23

IN THE
SUPREME COURT OF THE UNITED STATES
October Term, 1968

No. 929

PAUL E. SULLIVAN, ET AL., Petitioners
v.
LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., Petitioners
v.
LITTLE HUNTING PARK, INC., ET AL.

On Writ of Certiorari to the
Supreme Court of Appeals of Virginia

BRIEF FOR THE RESPONDENTS

QUESTIONS PRESENTED

1. Whether the Virginia Supreme Court of Appeals has the right to establish reasonable rules of procedure, indiscriminately applied, for the perfecting of appeals before that court.

2. Whether this Court will entertain a "moot" question when the opinion cannot effect the rights of the litigant.

3. Whether two litigants may combine their appeals before this Court to enable one litigant to rely on the statute available to the other.

4. Whether 42 U S C § 1981, 1982, guarantees to a member of the negro race the right to membership in a private social club.

5. Whether the First and Fourteenth Amendments, as they pertain to free speech, apply to directors of a private social club if the club performs a function that is also performed by the state or a division thereof.

LITTLE HUNTING PARK, INC.

In 1954, when Little Hunting Park was incorporated, as a non-stock corporation, the word "Community" appeared in the certificate of incorporation to indicate the original intention of the founders that membership be limited to the geographical area contiguous to the facilities. The by-laws provided for "membership certificates" (the same instruments that the petitioners elect to call "shares" in their brief) and membership is limited to those who own a membership certificate and are approved by the board of directors after recommendation by the membership committee. The by-laws further provide that the purpose of the corporation shall be to provide recreation for its members and not the public at large nor members of the community.

It is usual in the operation of clubs to require an initiation fee which is forfeited when membership ceases. However, the by-laws and operation of Little Hunting Park provide for a non-forfeiture of this initial payment and allows a transfer or assignment of this membership certificate representing the initial payment. The assignee or purchaser must submit an application to the Board of Directors of the club for membership. To become a member one must acquire a membership certificate *and* be approved for membership by the Board of Directors. A temporary assignment was permitted but the approval of the assignee was required by the Board of Directors. The approval of the Board of Directors has always been required. (A 50)

Although the by-laws provide that membership shall be limited to the areas contiguous to the club property and "such other area(s) as may be approved by the Board of Directors", the Board has freely construed this provision as to "such other area(s)" and 117 of approximately 530 members lived outside the contiguous areas (A 163) at the time of the trial.

Since the ownership of a membership certificate did not confer membership in the club, the developer of the area purchased certificates when the corporation was formed. His motive can only be presumed but it would follow that possibly he may have decided to assist in the formation of the club or to have membership certificates in the event a subsequent customer may express an interest in the club. A local church purchased a certificate to transfer to its minister.

The petitioners realized the prerequisites of membership and submitted the required request to the Board of Directors for approval.

The records of the corporation did not disclose those instances where applications were denied, therefore, the petitioners' brief states that "there is no record of any assignment ever being denied". When a witness recalled that a membership was denied but could not recall the reason, the petitioners brief states "but there is no evidence that this was other than because of the individual failure to satisfy the geographical requirement of the by-laws".

Although it is implied in the brief that the operation of Little Hunting Park was strictly a recreation facility, one of the petitioners testified to the social activities that were carried on by the members (A 228, 229, 230).

Little Hunting Park has all the attributes of a voluntary social club. It is voluntary, it has members, it is social, it is not open to the public but limited to members, dues are assessed and no admission is charged. Prospective members must be accepted by the governing body, and membership is limited and, it serves no public or community purpose for less than 15% of the residents of the petitioners' subdivision were members.

PARTIES

In the trial court, the petitioners Freeman and Sullivan maintained separate actions. For the purpose of appeal to this Court they consolidated their cases. Although they have a common respondent and contend that the causes of action arose out of the same set of circumstances, the law applicable to each does vary. Freeman, who is of the Negro race, relies on the Civil Rights Acts of 1866 (42 U.S.C. § 1981 and 1982), as well as the Thirteenth and Fourteenth Amendments to the United States Constitution. However, since the Freemans no longer reside in the United States their

claim is limited solely to compensatory and punitive damages.

Sullivan, who is of the White race, relies on the First and Fourteenth Amendments to the United States Constitution, contending that their expulsion from the respondent club was because of his dissent from its racial policies, and hence their right of free speech was abridged. In addition, since his "speech" concerned the refusal of a Negro application to a club, if the Civil Rights Act of 1866 is applicable to the Club, then his expulsion from membership also falls within the provisions of the Civil Rights Act of 1866.

The Civil Rights Act of 1866 supplemented the Thirteenth Amendment and applied to members of the Negro race. The Thirteenth Amendment abolished involuntary servitude. It is not the contention of Sullivan that he is of the Negro race; nor does he contend that he is one affected by the Thirteenth Amendment.

Although the brief of the petitioners contains a statement citing *DANIEL v. PAUL*, 37 U.S. L. Week 4481, 4482, (June 2, 1969), which rested on Title II of the Civil Rights Act of 1964 (42 U.S.C. § 2000, et seq), their "Questions Presented" does not include a question as to the applicability of the public accommodations section of that enactment.

It will be necessary to properly apply the law, to the two cases, to return to the division that existed in the trial court by listing the name of each as a sub-heading above each division of this brief.

A FEDERAL QUESTION

Sullivan and Freeman

The Petitioners base the jurisdiction of this appeal

on 28 U.S.C. 1257(3) which authorizes the review of this Court of the final judgment of the highest court of a state:

By writ of certiorari, where the validity of a treaty or statute of the United States is drawn into question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States.

The Virginia Supreme Court of Appeals rejected the petition and refused the appeal of the petitioners since the appeal was not perfected in the manner provided by law in that opposing counsel was not given a reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or a true copy of it pursuant to Rule 5:1 § 3(f) of the Rules of the Supreme Court of Appeals of Virginia.

HERB v. PITCAIRN, 324 U.S. 118, 65 S.Ct. 459, involved a question of procedure in the state court. The highest court of Illinois held that suit under Federal Employers' Liability Act should not have been filed in a city court when the injuries were sustained outside the territorial limits of the city. The matter was continued for a determination as to whether the decision of that court was based on state procedure or a federal question. The case is of interest because of the restatement of this Court's position on the review of a state court's decision based on state grounds.

At 324 U.S. 126, Justice Jackson stated:

This court from the time of its foundation has adhered to the principle that it will not review judgments of state courts that rest on adequate and independent state grounds. (citations) The reason is so obvious that it has rarely been thought to warrant statement. It is found in the partitionery of power between the state and federal judicial systems and in the limitations of our own jurisdiction. Our only power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights.

Speaking of the right of a state court to determine procedure, at page 123 the opinion stated:

The freedom of the state courts so to decide is, of course, subject to the qualification that the course of action must not be discriminated against because it is a federal one. *McKNETT v. ST. LOUIS & S.F.R. Co.*, 292 U.S. 230, 54 S.Ct. 690, 78 L. Ed. 1227. But we cannot say the court below, in so far as it did hold the city courts without power, construed the state jurisdiction and venue laws in a discriminatory fashion. *DIXON v. DUFFY* 342 U.S. 33, 72 S.Ct. 10; *YOUNG v. RAGEN* 337 U.S. 235, 69 S.Ct. 1073.

The state court cannot develop a novel procedure to dispose of a federal question. *NAACP v. STATE OF ALABAMA*, 357 U.S. 449, 78 S.Ct. 1163. Nor can a state develop procedural bars to the assertion of a federal question. *DOUGLAS v. STATE OF ALABAMA* 380 U.S. 415, 85 S.Ct. 1072.

The Constitution of Virginia § 88, in providing for the composition and jurisdiction of the Supreme Court

of Appeals provides, in part, as follows:

Subject to such reasonable rules as may be prescribed by law as to the course of appeals, the limitation as to the time, the value, amount or subject matter involved, the security required, if any, the granting or refusing of appeals, and the procedure therein, it shall, by virtue of this Constitution, have appellate jurisdiction in cases involving the constitutionality of a law as being repugnant to the Constitution of this State or of the United States, or involving the life or liberty of any person; and in such other cases as may be prescribed by law.

Section 8-1.1 of the Code of Virginia 1950 empowers the Supreme Court of Appeals to "prescribe the forms of writs and make general regulations for the practice of all courts of record, civil and criminal; and may prepare a system of rules of practice and a system of pleading and the forms of process to be used in all courts of record of the state, and put the same into effect".

Pursuant to the above statute, the Supreme Court of Appeals promulgated Rules of Supreme Court of Appeals of Virginia, and under its section on appellate proceedings, there is Rule 5:1 § 3(f) which provides:

Such a transcript or statement not signed by counsel for all parties becomes part of the record when delivered to the clerk, if it is tendered to the judge within 60 days and signed at the end by him within 70 days after final judgment. It shall forthwith be delivered to the clerk who shall certify on it the date he receives it. *Counsel tendering the transcript or statement shall give counsel reasonable written notice of the time and place of tendering it and a reason-*

able opportunity to examine the original or a true copy of it. (Italics supplied)

The Supreme Court of Appeals of Virginia has interpreted this rule on many occasions. The case of *SNEAD v. COMMONWEALTH*, 200 Va 850, 108 S.E. 2d 399, decided in 1959, stated:

The plain language of the Rule requires *counsel to give* opposing counsel reasonable written notice of the time and place of tendering the transcript or narrative of the evidence *and to give* him a reasonable opportunity to examine it. The duty rests on counsel to afford the reasonable opportunity to examine and not the trial judge. (Italics in Decision)

In *SNEAD v. COMMONWEALTH*, supra, *COOK v. VIRGINIA HOLSUM BAKERIES, INC.*, 207 Va 815, 153 S.E. 2d 209, and *BACIGALUPO v. FLEMING*, 199 Va 827, 102 S.E. 2d 321, prior notice was given to opposing counsel and the court was to determine whether the notice and opportunity to examine was reasonable under the Rule.

Counsel for the petitioners served written notice on Counsel for respondents by a letter dated Friday, June 9, 1967, that on that same afternoon he would deliver the transcript to the trial judge. In the usual course of mail delivery, the notice was received by counsel for respondents on the next business day, Monday, June 12, 1967. The "reasonable" written notice required by the rule was given to opposing counsel three days after the tender of the transcript to the trial judge.

Rule 5:1 § 3(f) contains language similar to that used in §6252 of the Code of Virginia, 1919. In construing this section, the Virginia court in *OCEAN*

ACCIDENT CORP. v. HALEY 158 Va 691, 164 S.E. 538, held:

“That the provision of the statute is mandatory, and that the notice was not reasonable within the plain meaning of its terms, which are jurisdictional”.

The holding of the Supreme Court of Appeals of Virginia has been consistent with all past interpretations of its rule. Its ruling, in this case, was limited to the state question of procedure.

WOLFE v. STATE OF NORTH CAROLINA, 364 U.S. 177, 80 S.Ct. 1482, involved the procedure used by the Supreme Court of North Carolina in dismissing an appeal of a trespass conviction. Citing *NICHOL v. COLE*, 256 U.S. 222, 41 S.Ct. 467, Justice Stewart stated:

When as here there can be no pretense that the (state) court adopted its view in order to evade a constitutional issue, and the case has been decided upon grounds that have no relation to any federal question, this Court accepts the decision whether right or wrong.

In upholding the decision of the North Carolina Court, this Court held:

The North Carolina Supreme Court did not decide this asserted federal question. We have found that it did not do so because of the requirement of rules of state procedural law within the Constitutional power of the States to define, and here clearly delineated and even-handedly applied. We have no choice but to determine that this appeal must be dismissed because no federal question is before us. That

determination is required by principles of judicial administration long settled in this Court, principles applicable alike to all litigants, irrespective of their race, color, politics, or religion.

It is contended by the petitioners that the remand to the Supreme Court of Appeals of Virginia (392 U.S. 657) "impliedly" held that the non-federal ground on which the Virginia Court rejected the original appeals was inadequate. The remand was "for further consideration in light of *JONES v. ALFRED H. MAYER Co.* 392 U.S. 409, 88 S.Ct. 2186, 20 L.Ed. 2d 1189". There was no determination actually or impliedly on the non-federal ground and, after the Virginia Court differentiated between the two cases, held that it had no jurisdiction under its rules of procedure.

The petitioners further contend that the dismissal of the appeal by the Virginia Court was arbitrary and unreasonable and that they fully complied with Rule 5:1 § 3(f). To sustain their contention that the court was arbitrary and "ignored its own precedents", they tried to ignore *SNEAD v. COMMONWEALTH*, supra, by hiding it in a footnote on page 21 of their brief.

Compliance with Rule 5:1 §3(f) requires reasonable written notice of the tendering of the transcript and a reasonable opportunity to examine the original or a true copy. The written notice was received three days after the presentation to the trial judge and a copy of the extensive transcript, fraught with errors, was given to counsel for the respondents, seven days after notice, in the Courthouse at 1:20 P.M. on a Friday afternoon, to be returned to counsel for petitioners on the following Monday at 6:30 P.M. Counsel for respondents had one working day plus two hours to examine and correct the

testimony at four days of trial. However, the requirements of notice and an opportunity to examine are conjoined and not in the alternative.

THE QUESTION IS MOOT

Freeman

DOREMUS v. BOARD OF EDUCATION, 342 U.S. 429, 72 S.Ct. 394, was a suit by a taxpayer and the father of a seventeen-year-old child to contest a New Jersey statute requiring the reading of the New Testament in the schools. When the matter reached this Court the girl had been graduated and the Court held:

Obviously no decision we could render would protect any rights she may have once had, and this court does not sit to decide arguments that have been put to rest.

EX PARTE BAEZ, 177 U.S. 378, 20 S.Ct. 673, held:

It is well settled that this court will not proceed to adjudication where there is no subject matter on which the judgment of the court can operate.

AMALGAMATED ASS'N etc. v. WISCONSIN EMPLOYMENT RELATIONS BOARD, 340 U.S. 416, 71 S.Ct. 375, citing *UNITED STATES v. ALASKA S.S. CO.*, 253 U.S. 113, 40 S.Ct. 448, held:

A Federal Court is without power to decide moot questions or give advisory opinions which cannot effect the rights of the litigants in the case before it.

The Petitioner Freeman, having left the United States, is no longer interested in the use of the facilities of the respondent Club but seeks only compensatory and

punitive damages under the Civil Rights Act of 1866.

But, does the Civil Rights Act of 1866, under which he is now proceeding, give him a right to damages for the alleged deprivation of civil rights?

At this time, the latest interpretation of the Civil Rights Act of 1866 was contained in *JONES v. ALFRED H. MAYER CO.* supra. Speaking for the court, Justice Stewart said:

At the offset, it is important to make clear precisely what this case does not involve. . . . It does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling. . . . And although it can be enforced by injunction, *it contains no provision expressly authorizing a federal court to order the payment of damages.* (Italics supplied)

If a cause of action for damages is available to him under civil rights legislation, it would be available under 42 U.S.C. § 1983 of the law which provides:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceedings for redress.

The purpose of the foregoing statute is plain from the title of the legislation, "An Act to enforce the Provisions of the Fourteenth Amendment to the Consti-

tution of the United States, and for other purposes". 17 Stat. 13. *MONROE v. PATE*, 365 U.S. 167, 81 S.Ct. 473.

To hold that this statute would apply to individuals, not acting under the badge of state authority, would make the Fourteenth Amendment and the First Amendment applicable to such individuals and would cause a deluge of actions between individuals, not only on the basis of civil rights, but on questions of free speech, press, religion, etc.

Among the proponents of a cause of action for damages under subsequent civil rights legislation, they are unanimous that the enactments did not provide a right to sue for damages. The remedies provided by the Civil Rights Act of 1964 are conciliatory and coercive action cannot be taken against violators of that act. 42 U.S.C. § 2000 e-4(f)(4).

If an action for damages does not exist by statute, there is no legal remedy for exclusion of such an individual from admission into a voluntary organization no matter how arbitrary or unjust the exclusion. 6 AmJur 2d, Associations and Clubs §18; 7 C.J.S. Associations, §23, page 56.

Sullivan

Sullivan's constitutional question is derivative from Freeman, without Freeman he has no position in this Court, unless the First Amendment applies to us all and harassment of individuals, under the claim of free speech, is not cause for a disassociation of social contact with the harasser.

THE FIRST AMENDMENT,
FOURTEENTH AMENDMENT AND
THE CIVIL RIGHTS ACT OF 1866

Sullivan

Sullivan first contends that the respondents violated his rights under the First Amendment in expelling him from membership since his activities were an exercise of his free speech.

Realizing that the First Amendment applies to state action, his contention is that the operation of Little Hunting Park is a public function and as such "may not permissibly condition the use of its property upon the forfeiture of an individual's First Amendment rights". Also, he contends that "by giving sanction to Sullivan's expulsion, the state court deprived Sullivan of his rights, guaranteed by the First Amendment, to criticize the conduct of the association's directors, who by virtue of holding that position in community life, had become "public figures".

Despite the operation of the respondent club over the years and recognition of the restriction on membership by the petitioners, they rely most strongly on the word "community" used in the Certificate of Incorporation as their basis for determining that the club operated a public function.

Webster's New Collegiate Dictionary, Second Edition, lists five meanings for the word "community":

1. A body of people having common organization or interests or living in the same place under the same laws; hence an assemblage of animals or plants living in a common home under similar conditions.

2. Society at large; the people in general, restrictedly, the people of a particular region, or the region itself.
3. Joint ownership or participation; as, a community of goods, community of interests.
4. Common character; likeness.
5. Ecol. An aggregate of organisms.

Webster's preface tells us that "the earliest ascertainable meaning is placed first and later meanings are placed in the order shown."

It is quite apparent that the scrivener of the certificate of incorporation was not writing on biology and, therefore, did not intend to use the fifth meaning. Did he intend the second meaning as supposed by the petitioners? It is hard to imagine that the word was selected to mean that society at large was intended to use the facilities, when contemporaneously there was drafted by-laws which provided that the facilities were intended for the corporation's members.

A further argument to bring this matter under state control, is that since the respondents provide a facility that is provided in other jurisdictions by the state, therefore, the facility is a public facility and the directors of the club are "public figures".

It is hard to imagine any facility that is not provided by the state. The state is in the grocery business, through commissaries, housing, education, pre-natal care through burial. Religion is not exempt, for the "state" dispenses morality through chaplains in the armed services and national guard. To carry this argument to an extreme, the grocer, landlord, educator, doctor and mortician must accept the abuse of every crackpot who disagrees

with his ideas or the method of his doing business because to preserve his "right not to listen" would abridge the crackpot's right of free speech.

In pursuing his argument that the state court action brings this matter under the First Amendment, he contends that "the trial court invoked a standard of state law which had the effect of depriving Sullivan of rights protected by the First Amendment". The respondents did not seek court action, Sullivan brought this action to overturn the action of the respondent club in expelling him from membership. This puts the state court in the position of ruling — "It is the opinion of the court that the First Amendment does not apply to private individuals but if we are to rule that way, since we are an arm of the state, the First Amendment would then apply to the individuals".

Failing a standing on his own right before the Court, Sullivan then proceeds to exert the constitutional rights of Freeman as justification for his relief, stating that he was punished because he demanded rights for Freeman. *BARROWS v. JACKSON*, 346 U.S. 249, 73 S.Ct. 1031, contains the following:

Apart from the jurisdictional requirement, this Court has developed a complimentary rule of self restraint for its own governance (not always clearly distinguished from the constitutional limitation) which ordinarily precludes a person from challenging the constitutionality of state actions by invoking the rights of others. See *ASHWANDER v. TENNESSEE VALLEY AUTHORITY*, 297 U.S. 288, 346 - 348, 56 S.Ct. 466, 482-483, 80 L.Ed. 688

(concurring opinion).

The respondents satisfied the trial judge that there was ample evidence to warrant expulsion of Sullivan on the basis of the charges made against him. The petitioners' statement that "The expulsion was unquestionably retaliatory" is not contained in any evidence before the court.

The petitioners disagree with the learned trial judge who found "ample evidence to justify its conclusion that the complainant's acts were inimicable to the Corporation's members and to the Corporation". To justify their disagreement they state that the allegations against him are completely false, or exaggerated and distorted, then proceed to justify his reasons for the acts charged by the respondents.

The charges against Sullivan by the respondents were false because Mr. Sullivan said they were so. For example, one of the charges was that he instigated a harassment of the board by numerous unfriendly telephone calls. He testified that he did not know of any telephone calls (hence they were not made) but had asked people to write letters. But in answer to the second question thereafter he stated that a Mr. Sutherland called. (A 73, 74)

The purpose of Little Hunting Park was social. The members gathered for parties (A 228) in an atmosphere of compatibility and fellowship. The disruption of this compatibility and fellowship was inimical to the corporation and its members.

Sullivan instituted an action in the Circuit Court of Fairfax County to postpone the expulsion hearing, requesting the right of counsel at the hearing and a bill of particulars. (A 70, 71, 82, 83, 84, 85) In open court, the parties stipulated that the respondents would post-

pone the hearing, allow counsel of Sullivan's choosing at the hearing and provide him with a list of the charges against him. Sullivan stipulated that he would call a membership meeting and abide by the decision of the membership. (Petitioner's Brief, page 40).

His request for a membership meeting contained three directives to the membership (A 201) and counsel for the corporation, in the notice of the meeting, changed these directives to questions (A 203). Even though the vote was overwhelmingly against him, he has refused, and continued to refuse, to adhere to his stipulations filed in court.

His brief states on page 40, footnote 29, that "the stipulation was noted by the trial judge, but he specifically refused to pass on it. It is clear, however, that the terms of the stipulation were never met." The meeting was held but the agenda was different.

The trial judge did not rule on the stipulations but used the following language in his decision letter (A 232) :

I do not find it necessary to pass on the defense a valid compromise and settlement and that that the stipulation of July 16, 1965, constituted under it the complainant is prevented from taking further action, *although I am inclined to the view that such is the case.*

(Italics supplied)

The fact that filing suit by a member of a voluntary association may not be grounds for his expulsion is granted, but this does not extend to a case where the member refuses to abide by the decision rendered in the suit.

THE THIRTEENTH AMENDMENT,
THE FOURTEENTH AMENDMENT
AND THE CIVIL RIGHTS ACT OF 1866

Freeman

In his lease to Freeman, Sullivan included a provision to the effect that in addition to the premises, he also included his membership certificate in the respondent club, Little Hunting Park, Inc. It is basic contract law that one cannot bargain away what is not his nor can he bind a third party to his contract against the will of the party and without his consent.

There is no contention that Little Hunting Park was a party to the lease nor is there any contention that the parties to the lease did not know that it was necessary for the approval of the Board of Directors before the membership privileges could be transferred. To the contrary, the petitioner Freeman submitted his application in writing as required by the by-laws of the corporation.

It appears from the manner in which the petitioner's brief is written that the transfer of a membership certificate was routine with the transfer of a residence. The residence leased to Freeman was in a subdivision known as Bucknell Manor which consisted of 800 homes of which 115, or roughly 15%, belonged to the respondent club. (A 163) Conversely, 85% of the residents of this subdivision did not belong to the respondent club. The vast majority of the members of the club were homeowners and not tenants.

To bring his case within the scope of 42 U.S.C. § 1982, it is Freeman's contention that the failure of the club to admit him to membership, deprived him of his right to lease real property "as is enjoyed by white

citizens thereof". He requests a privilege that is not available to eighty-five percent of his neighbors, white and negro.

JONES v. MAYER CO., supra, interpreted § 1982 to the extent that it was a valid exercise of Congress to enforce the Thirteenth Amendment to bar all racial discrimination in the sale or rental of property. The purpose of the statute was to abolish the Black Codes and eliminate the vestiges of slavery. The statute is limited to members of the negro race and does not apply to discrimination because of creed or national origin. The stated purpose of the law is to give all citizens the same right as is enjoyed by white citizens.

But does the white citizen have a "right" to join voluntary social organizations? The grant or refusal of membership in a voluntary association is a matter within the complete control of the organization which has the power to enact laws governing the admission of members and to place restrictions on the right of admission. In other words, membership is a privilege.
7 C.J.S. Associations § 23, page 56.

To make this privilege a matter of right to members of the Negro race would give the Negro not the same right as is enjoyed by white citizens but a far superior right which would be contrary to the wishes of the drafters of the legislation and those who truly believe in equal rights for the minorities in our midst.

Justice Stewart, in *JONES v. MAYER CO.*, supra, states:

Thus, although § 1982 contains none of the exemptions that Congress included in the Civil Rights Act of 1968, it would be a serious mistake to suppose that § 1982 in any way diminishes

the law recently enacted by Congress.

It would follow that it would also be a serious mistake to suppose that §1982 would diminish the Civil Rights Act of 1964, 42 U.S.C. 2000, et seq. The actual contention of the petitioners is not one of leasing property but actually of public accommodations. For in no way did the respondents interfere with his rental of property. Section 201e of the 1964 Act provides:

The provisions of this title shall not apply to a private club or other establishment not in fact open to the public, except to the extent that the facilities of such establishment are made available to the customers or patrons of an establishment within the scope of subsection (b).

Subsection (b) contains the requirement that law applies to certain establishments if its operations affect commerce, or if discrimination or segregation by it is supported by the State.

There is no contention, by the petitioners, that the premises are open to the public or that its operations affect commerce. To the contrary, their suit to compel admission as members and their contention is that it is limited to the "community".

They do contend that the directors are "public figures" but from the reading of their brief it would appear that this is to place Sullivan under the shelter of the First Amendment and in support thereof they cite *CURTIS PUBLISHING CO. v. BUTTS*, 388 U.S. 130, a libel suit decided on the First Amendment.

The further contention of the petitioners is that 42 U.S.C. § 1981 giving all persons the same right "to make and enforce contracts" applies to the contract or lease executed by Sullivan and Freeman. The purpose

of the law's equality and the word "same" is used to apply to "all" persons.

If under the same circumstances, Sullivan and Freeman were both of the White race, we would probably not be before this Court for the simple rule of contracts would apply. One of two situations would prevail, either Sullivan had informed Freeman that membership was subject to the approval of the Board of Directors and Freeman took subject to that condition and had no claim against Sullivan, or Sullivan did not inform Freeman of the contingency and is responsible to Freeman in damages.

JONES v. MAYER Co. supra, involved the public offering of houses by the respondent. The offer was accepted by petitioners and performance was refused by the Mayer Company. There is no analogy to the present case. The respondent club was not in privity with the makers of the lease, had no knowledge of the lease, and did not offer to contract with either party nor did they accept an offer from either party. The relationship between the association and prospective member is one of contract and agreement is required by both parties. 6 Am.Jr. 2d §18.

To carry the petitioners' argument to a ridiculous extreme, Sullivan could have included in his lease the use of his neighbor's lawnmower which is necessary to properly maintain the lawn on the premises. If the neighbor says "no" is he then violating Freeman's right to contract or to lease property under Sections 1981 and 1982?

The petitioners place great weight on the desirability of a swimming pool in the neighborhood and submitted opinions to that effect. (A 253 through 266). The

opinions are directed to builders to stimulate the sale of their homes. However, the residents of Bucknell Manor apparently do not agree with the opinion of the "Practical Builder" for less than 15% have joined the respondent club. The admonition to the builder in the "Practical Builder" is for *him* to build recreational facilities to enable a quicker sale of his houses. The "puffing of the wares" of a real estate broker that there is a country club or recreational facilities in the area, does not mean that the purchaser has the right to such facilities nor does it, per se, increase the value of the realty.

JONES v. MAYER, supra, interpreted 42 U.S.C. § 1982 by a reference to the debates of Congress (Congressional Globe, Vol. 71, pps. 522 et seq.) to determine the intent of the framers. Senator Trumbull, the sponsor of the bill, stated:

This bill has nothing to do with political rights or "status" of the parties. It is confined exclusively to their civil rights, such rights as should appertain to every free man.

On the house side, Representative Wilson, after quoting pertinent sections of the bill, then said:

It provides for equality of citizens of the United States in the enjoyment of civil rights and immunities. What do these terms mean? Do they mean that in all things civil, social, political, all citizens, without distinction, shall be equal? By no means can it be so construed.

By no means can § 1982 be construed to regulate the social rights of men.

CONCLUSION

A decision in this case, favorable to the petitioners, would:

1. Take away from the State Court the right to fix reasonable rules of procedure for the maturing of appeals before that Tribunal.

2. Set a precedent to allow this Court to consider questions that are not in controversy and burden the Court with moot matters.

3. Substantially change the existing law of contracts to the extent that parties to a contract could bind those not in privity, if one of the contracting parties were of the Negro race.

4. Substantially hinder the right of association of citizens. The argument submitted by the petitioners could apply to every country club which, by necessity, must serve those in the contiguous community. Incompatibility, which is a nebulous reason, could still be a reason for exclusion from clubs but when applied to a member of the Negro race, it would be presumed that race would be the reason for such incompatibility.

5. Be contrary to the intent of Congress, the thirty-ninth and the eighty-eighth, which saw fit to exclude the respondent from the Civil Rights Act of 1964.

For the foregoing reasons, the Supreme Court of Appeals of Virginia should be affirmed and the writ dismissed.

GERALD M. O'DONNELL
100 South Royal Street
Alexandria, Virginia 22314
Of Counsel

Respectfully submitted,
JOHN CHAS. HARRIS
1500 Belle View Boulevard
Alexandria, Virginia 22307
Attorney for Respondents

INDEX

	Page
Opinions below	1
Jurisdiction	2
Statutory provisions involved	2
Questions presented	2
Interest of the United States	3
Statement	4
Summary of argument	7
Argument:	
I. Racial Discrimination in the assignment of mem- berships in Little Hunting Park, Inc., violates Section 1 of the Civil Rights Act of 1866	10
A. Section 1982 bars respondent's conduct	12
1. The share is an incident of real property covered by Section 1982	12
2. The share, as personal property, is covered by Section 1982	18
B. Subsequent enactment of a Public Ac- commodations Law in 1875 does not indicate that the rights claimed here were beyond the scope of the 1866 legislation	20
C. This Court's decision in the <i>Civil Rights Cases</i> is not a viable obstacle to our conclusion	25
D. The Public Accommodations Law of 1964 does not affect the coverage of the 1866 Act	28
II. Petitioner Sullivan has standing to seek relief under the statute in consequence of the in- juries he suffered in obeying it	33
III. Petitioners are entitled to compensatory dam- ages as relief under Section 1982	35
Conclusion	38

CITATIONS

Cases:

<i>Alabama, State of v. United States</i> , 304 F. 2d 583, affirmed, 371 U.S. 37	Page 36
<i>Baird v. Tyler</i> , 185 Va. 601, 39 S.E. 2d 642	19
<i>Barrows v. Jackson</i> , 346 U.S. 249	9, 13, 20, 33
<i>Bell v. Hood</i> , 327 U.S. 678	36
<i>Bell v. Maryland</i> , 378 U.S. 226	3, 21, 27
<i>Boynton v. Virginia</i> , 364 U.S. 454	3
<i>Brewer v. Hoxie School District No. 46</i> , 238 F. 2d 91	10, 36
<i>Buchanan v. Warley</i> , 245 U.S. 60	34
<i>Burton v. Wilmington Pkg. Auth.</i> , 365 U.S. 715	3
<i>Civil Rights Cases</i> , 109 U.S. 3	8, 21, 25, 26, 27, 28
<i>Clearfield Trust Co. v. United States</i> , 318 U.S. 363	19
<i>Coger v. North West. Union Packet Co.</i> , 37 Iowa 145	22
<i>Contract Buyers League v. F & F Investment</i> , 300 F. Supp. 210	18
<i>Curtis Publishing Co. v. Butts</i> , 388 U.S. 130	13
<i>Daniel v. Paul</i> , 395 U.S. 298	3, 8, 12, 15, 16, 17
<i>Davenport v. United States</i> , 260 F. 2d 591	19
<i>Deckert v. Independence Shares Corp.</i> , 311 U.S. 282	37
<i>Donnell v. State</i> , 48 Miss. 661	22
<i>Erie R. Co. v. Tompkins</i> , 304 U.S. 64	19
<i>Evans v. Newton</i> , 382 U.S. 296	3
<i>Ferguson v. Gies</i> , 82 Mich. 358	22
<i>Garner v. Louisiana</i> , 368 U.S. 157	3
<i>Hamm v. City of Rock Hill</i> , 379 U.S. 306	13
<i>Heart of Atlanta Motel v. United States</i> , 379 U.S. 241	28
<i>Hodges v. United States</i> , 203 U.S. 1	26
<i>Howard v. Lyons</i> , 360 U.S. 593	19
<i>Hunter v. Erickson</i> , 393 U.S. 385	3
<i>Hyde v. Woods</i> , 94 U.S. 523	19
<i>J. I. Case Co. v. Borak</i> , 377 U.S. 426	36, 37
<i>Jones v. Mayer Co.</i> , 392 U.S. 409	3, 8, 9, 11, 12, 13, 14, 18, 19, 22, 24, 26, 27, 28, 29, 30, 31, 32, 35
<i>Mitchell v. DeMario Jewelry</i> , 361 U.S. 288	36
<i>Nesmith v. YMCA of Raleigh, N.C.</i> , 347 F. 2d 96	16
<i>Page v. Edmunds</i> , 187 U.S. 596	19
<i>Peterson v. Greenville</i> , 373 U.S. 244	3
<i>Porter v. Warner Co.</i> , 328 U.S. 395	36
<i>Reitman v. Mulkey</i> , 387 U.S. 369	3

III

Cases—Continued

<i>Rockefeller Center Luncheon Club, Inc. v. Johnson</i> , 131 F. Supp. 703	Page 16
<i>Securities and Exchange Commission v. Universal Service Association</i> , 106 F. 2d 232	19
<i>Sheiley v. Kraemer</i> , 334 U.S. 1	3
<i>Texas & N.O.R. Co. v. Ry. Clerks</i> , 281 U.S. 548	36
<i>Texas & Pacific Ry. Co. v. Rigsby</i> , 241 U.S. 33	10, 36, 37
<i>Textile Workers v. Lincoln Mills</i> , 353 U.S. 448	19
<i>Travelers Health Association v. Commonwealth</i> , 188 Va. 877, 51 S.E. 2d 263, affirmed, 339 U.S. 643	19
<i>United States v. Guest</i> , 383 U.S. 745	26
<i>United States v. Johnson</i> , 390 U.S. 563	33
<i>United States v. Mosley</i> , 238 U.S. 383	23
<i>United States v. Price</i> , 383 U.S. 787	24
<i>United States v. Republic Steel Corp.</i> , 362 U.S. 482	36
<i>United States v. Richberg</i> , 398 F. 2d 523	16
<i>United States v. Standard Oil Co.</i> , 332 U.S. 301	19
<i>United States v. The Schooner Peggy</i> , 1 Cranch 103	13
<i>United States v. Williams</i> , 341 U.S. 70	23
<i>Virginia, Ex Parte</i> , 100 U.S. 339	21
<i>Wyandotte Co. v. United States</i> , 339 U.S. 191	37

Constitution and statutes:

United States Constitution:

Thirteenth Amendment	9, 25, 26, 28, 31, 33
Fourteenth Amendment	9, 10, 21, 22, 23, 25, 26, 31, 34
Civil Rights Act of 1866, 14 Stat. 27, Section 1	3,
9, 10, 11, 20, 21, 22, 23, 25, 28, 29, 30, 31, 32, 33, 35	
42 U.S.C. 1981	2, 9, 11, 12, 19, 31
42 U.S.C. 1982	2, 3, 7, 8, 9, 10, 11, 12, 13, 14, 15, 18, 19, 31
Enforcement Act of 1870, 16 Stat. 140 <i>et seq.</i>	9, 12, 22, 23
Section 16	11
Section 18	12
Civil Rights Act of 1875, 18 Stat. 335	8,
9, 21, 22, 23, 24, 25, 28, 29, 31	
Section 1	21, 24
Section 2 (now 18 U.S.C. 242)	21, 23, 24, 25
Section 3	21, 25
Section 4 (now 18 U.S.C. 243)	21, 23
Section 5	21

IV

Civil Rights Act of 1964, Title II, 42 U.S.C. 2000a <i>et seq.</i>	3, 9, 28, 29, 31, 33
Section 201(a).....	30
Section 201(b).....	30
Section 201(c).....	30
Section 204(a).....	30
Section 204(d).....	30
Section 206.....	30
Section 207(b).....	32, 33
Title X, Sections 1001-1004.....	30
Civil Rights Act of 1968, Title VIII, 82 Stat. 81, 42 U.S.C.	
3601 <i>et seq.</i>	3, 9, 13
Section 804(b).....	14
Fair Housing Law of 1968, 42 U.S.C. 3601 <i>et seq.</i>	29, 30, 31
United States Code:	
18 U.S.C. 241.....	23
28 U.S.C. 1343(4).....	10, 36
42 U.S.C. 1988.....	37
Virginia Code:	
Sec. 13-105 (1950).....	19
Sec. 8-610 (1957).....	35
Sec. 13.1-211 (1964).....	19
Miscellaneous:	
2 Cong. Rec. 340.....	23
2 Cong. Rec. 4082.....	24
Cong. Globe, 39th Cong., 1st Sess.....	14, 22
Cong. Globe, 42d Cong., 2d Sess.....	22
Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st. Sess.....	31
Flack, <i>The Adoption of the Fourteenth Amendment</i> 11-54 (1908).....	22
Frank & Munro, <i>The Original Understanding of "Equal Protection of the Laws,"</i> 50 Colum. L. Rev. 131.....	21
Freedmen's Bureau Bill.....	22
Gressman, <i>The Unhappy History of Civil Rights Legis- lation</i> , 50 Mich. L. Rev. 1323.....	22

In the Supreme Court of the United States

OCTOBER TERM, 1969

No. 33

PAUL E. SULLIVAN, ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF APPEALS
OF VIRGINIA

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE

OPINIONS BELOW

The decision of the trial court in the *Sullivan* case (A. 232-234), which is in the form of a letter to counsel, is not officially reported but is printed in 12 Race Rel. L. Rep. 1008. The trial court's opinion in the *Freeman* case (A. 235-236), also contained in a letter to counsel, is unreported. The orders of the Supreme Court of Appeals of Virginia rejecting the appeals from the trial court (A. 242, 243) are not reported. The opinion of this Court (A. 244) granting the previous petition for a writ of certiorari and vacating the judgments of the Virginia Supreme Court is re-

ported at 392 U.S. 657. The opinion of the Supreme Court of Virginia on remand (A. 247-249) is reported at 209 Va. 279, 163 S.E. 2d 588.

JURISDICTION

The judgment of the Supreme Court of Appeals of Virginia was entered on October 14, 1968 (A. 249-250). The petition for a writ of certiorari was filed on January 10, 1969, and granted on April 1, 1969 (A. 251; 394 U.S. 942). The jurisdiction of this Court rests on 28 U.S.C. 1257(3).

QUESTIONS PRESENTED

Although the parties have briefed additional issues, we address ourselves only to the following questions, involving the proper construction and application of the Civil Rights Act of 1866 (42 U.S.C. 1981, 1982):

1. Whether a leasehold interest in membership in privately owned community recreational facilities located in the community where a Negro citizen makes his home is "property" which may not be withheld from him solely on the basis of his race under 42 U.S.C. 1982.

2. Whether a white person may secure judicial relief from the retaliatory acts of parties affected by his compliance with 42 U.S.C. 1982 in dealings with a Negro.

3. Whether, in appropriate circumstances, plaintiffs prevailing in actions arising under 42 U.S.C. 1982 may recover monetary damages.

STATUTORY PROVISIONS INVOLVED

Section 1982 of Title 42 of the United States Code, Revised Statutes § 1978, provides as follows:

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property.

INTEREST OF THE UNITED STATES

The United States has a continuing interest in eradicating discriminatory practices which deny to the members of any group, on account of their race, access to certain residential communities, to places of public accommodation or to community recreational facilities—especially those practices which tend to fence out the Negro from an entire area, and to segregate housing arrangements. The laws of the Nation attest that concern—including the Civil Rights Act of 1866 invoked here, Title II of the Civil Rights Act of 1964 and Title VIII of the Civil Rights Act of 1968. The appearance here is consistent with the government's participation in such cases as *Shelley v. Kraemer*, 334 U.S. 1; *Boynton v. Virginia*, 364 U.S. 454; *Burton v. Wilmington Pkg. Auth.*, 365 U.S. 715; *Garner v. Louisiana*, 368 U.S. 157; *Peterson v. Greenville*, 373 U.S. 244; *Bell v. Maryland*, 378 U.S. 226; *Evans v. Newton*, 382 U.S. 296; *Reitman v. Mulkey*, 387 U.S. 369; *Jones v. Mayer Co.*, 392 U.S. 409; *Hunter v. Erickson*, 393 U.S. 385; *Daniel v. Paul*, 395 U.S. 298.

This particular case, however, presents a special and more direct federal concern. Dr. T. R. Freeman, Jr., one of the petitioners and the victim of the discrimination charged, was an employee of the federal govern-

ment, necessarily living in the Washington area, when he and his family were refused membership in a community recreational facility available to all other residents. In these circumstances, the United States, as the largest employer in the region affected, has a more immediate interest in the problem, and, also, a more obvious responsibility for attempting to offer a solution.

STATEMENT

Little Hunting Park, Inc., was incorporated as a non-stock corporation in 1954 principally for the purpose, set forth in its certificate of incorporation, of organizing and maintaining "community park and playground facilities," including a swimming pool, for "community recreation purposes" (A. 24, 120-121). Currently, swimming, tennis and other recreational activities are made available to the residents of four specified subdivisions (Bucknell Manor, Bucknell Heights, Beacon Manor and White Oaks) and certain adjacent areas in Fairfax County, Virginia (A. 28, 121, 143). Subject to a 600-share maximum, the corporation's bylaws provide that membership shares entitling the holder, his family and guests to use its facilities, are available to all adult persons who "reside in, or who own, or who have owned housing units," within the specified geographic areas (A. 28, 121-122).¹ No other qualification requirement, such

¹ The number of persons living within the four specified subdivisions who are shareholders varies from 115 out of the 750-800 families residing in the Bucknell Manor and Bacon Manor subdivisions to 136 out of the 174 families residing in Bucknell Heights. There are no statistics on White Oaks (A. 148-149, 163).

as nomination or recommendation by existing members, is mentioned. There are no limits on the number of shares an individual may hold; shares have been held by institutions and corporations owning property in the prescribed areas (A. 28, 46, 121, 123-124, 216-218). Shares may be acquired either by purchase directly from the corporation or from a previous holder (at prices ranging from \$150-\$230), or by lease from a landlord to his tenant (A. 28-29, 45-46, 122-123, 128). The bylaws provide that the issuance and assignment of shares is subject to approval of the Board of Directors of Little Hunting Park, but in the first 12 years of its operation, 1,183 shares were issued and 322 shares assigned without there being any record of any assignment having been denied approval, prior to the attempt of Sullivan to assign a share to Freeman (A. 29, 40-50, 125-128, 148).²

Petitioner Paul E. Sullivan owns two houses within the geographic areas served by the recreational facilities of Little Hunting Park. From 1962 until 1965, he held a membership share for each (A. 45-46, 78-79). During those years he rented one of the houses to various tenants, including the Little Hunting Park share for that house as part of the leasehold interest (A. 46, 49). On February 1, 1965, he leased the house to Dr. T. R. Freeman, Jr., for a term of one year, subject to renewal. He included the membership share in Little Hunting Park as part of the leasehold inter-

² There was testimony that an assignment of a share was disapproved by the Board of Directors in May 1961. Since there are no records of the incident, details of the transaction and the reason for any disapproval are not now known. (A. 127).

est to which the rental fee, \$129 per month, applied (A. 46-47, 177). Dr. Freeman and his family are Negroes. They moved into the house (and remained there into 1967), but the assignment of the Little Hunting Park share membership was not approved by the Board of Directors. It is clear from the record that they rejected it solely because Freeman is a Negro (A. 48, 51-52, 55, 112-113, 130-131, 145-146, 155-156, 188-189).

Following the Board's disapproval, Sullivan met with various members of the Board, other shareholders, and community leaders in an effort to have the decision reversed. He organized a members' petition to the Board for a membership meeting to hear Freeman and reconsider the decision to keep him out. The Board met on June 11, 1965, and decided Sullivan had given "due cause" for expulsion from the corporation by his refusal to accept the Board's decision and his allegedly intemperate criticism of the Board's action (A. 59, 130, 138-139, 190). Neither the Board nor the membership ever met with Dr. Freeman. On August 24, 1965, after giving Sullivan a brief hearing, the Board voted unanimously to expel him (A. 67, 71-72, 77, 97-98, 143, 157-158). Sullivan was notified of this action by a letter from the president of the corporation which also included a check tendering to him the then current sale price of his two shares (A. 72, 116, 200-201).

Sullivan and Freeman then commenced separate civil actions against Little Hunting Park and its directors. Both sought orders declaring the corporation's racially discriminatory admission policy invalid

and requiring it to approve Sullivan's assignment to Freeman (A. 5-13, 15-19). Sullivan also sought reinstatement of his membership shares and monetary damages for his wrongful expulsion. Freeman also prayed for monetary damages to compensate him for Little Hunting Park's unlawful interference with his contract with Sullivan and for depriving him of the full enjoyment of his leasehold estate.

The trial court, the Circuit Court of Fairfax County, Virginia, dismissed both complaints, holding Little Hunting Park to be a private social club with authority to determine the qualifications of those using its facilities, including the right to deny use on the basis of race (A. 232, 235). The court found that the expulsion of Sullivan was permitted by the relevant provisions of the corporate bylaws and justified by the evidence (A. 232).

The Virginia Supreme Court of Appeals rejected the petitions for appeal, citing plaintiffs' failure to comply with a state procedural rule (A. 242, 243). This Court vacated that judgment and remanded the case to the Virginia Supreme Court for "further consideration in light of *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409" (A. 244). On remand the Virginia Supreme Court disposed of the case on the same procedural ground (A. 247-249), and petitioners once again sought review in this Court.

SUMMARY OF ARGUMENT

I. The central question in this case is whether the "property" clause of Section 1 of the Civil Rights Act of 1866, 42 U.S.C. 1982, prohibits a corporate com-

munity recreational association from discriminating with respect to membership on the basis of race, where access to the facilities involved is available to all other residents in a stated geographic area. The question is largely settled by *Jones v. Mayer Co.*, 392 U.S. 409. Under that decision, it seems clear that the developer of a comprehensive community such as Reston, Virginia, or the apartment-town house complexes of Southwest Washington, D.C., would not satisfy the statute if he sold or leased living quarters to all, but permitted only whites to use the community's other facilities. Even though the corporation here was not part of a larger development plan and all houses in the neighborhood concerned were not automatically members, this case is essentially the same. Little Hunting Park is not a private social club; except for this case, membership in it has never been premised on anything other than living in the area and paying the necessary fees. There are none of the earmarks of exclusivity or choice traditionally associated with the private club; the case in this respect is just like *Daniel v. Paul*, 395 U.S. 298, decided last term. Whether viewed as an incident to real estate, or as personal property, the membership shares in Little Hunting Park are subject to the guaranties against racial discrimination embodied in Section 1982.

Neither enactment of a public accommodations law in the Civil Rights Act of 1875 nor this Court's decision in the *Civil Rights Cases*, 109 U.S. 3, stands as an obstacle to our conclusion. There can be little doubt that the draftsmen of the 1866 Act believed that they were reaching places of public accommodation. The reach

of the 1866 Act was clearly shown by its reenactment in 1870, after adoption of the Fourteenth Amendment had explicitly guaranteed to Negroes equal protection of the law. If any reason need be found why Congress again addressed itself to the subject in 1875, we think it may be found in a desire to provide a more effective means, through federal enforcement, to vindicate rights already recognized. The *Civil Rights Cases* have been substantially eroded by this Court's subsequent decisions, particularly its broad reading of the congressional power to enforce the Thirteenth Amendment in *Jones*.

Nor does the Public Accommodations Law of 1964 affect the coverage of the 1866 Act. Here, also, *Jones* principally answers any question through its rejection of a comparable argument based on the Fair Housing Title of the Civil Rights Act of 1968. The 1964 Act indicates nothing of the purpose of legislators a century earlier; there are substantial differences between the new laws and the old; and while the 1964 Act has limitations absent from that of 1866, there is no reason to treat these as a repeal *sub silentio* of the 1866 Act (see *Jones*, 392 U.S. at 437). To the contrary, the 1964 Act specifically saves prior legislation to the extent it is not inconsistent, and we show that this condition is met.

II. We discuss briefly objections raised to the standing of the white assignor of membership, Mr. Sullivan, and to the damages which both petitioners seek. Petitioner Sullivan's standing is settled by *Barrows v. Jackson*, 346 U.S. 249, where a white seller was found

to have standing to assert a Negro's rights under the Fourteenth Amendment in resisting a suit for damages which a co-covenantor claimed had been caused by the seller's breach of a racially restrictive covenant. Here, also, the injury of which Mr. Sullivan complains has been inflicted upon him as a direct consequence of his attempt to recognize a Negro's civil rights and for the purpose of punishing that attempt. While Section 1982 states no explicit method of enforcement, courts have "the power to afford all remedies necessary to the vindication of federal substantive rights defined in statutory and constitutional provisions except where Congress has explicitly indicated that such remedy is not available." *Brewer v. Hoxie School District No. 46*, 238 F.2d 91, 98 (C.A. 8). No such indication has been given in this case, see 28 U.S.C. 1343(4), and the damages remedy is plainly appropriate, *Texas and Pacific Ry. Co. v. Rigsby*, 241 U.S. 33, 39. Both in order to compensate the Negro for any harm done and to deter disobedience of the law, this Court should hold that the damages are recoverable under 42 U.S.C. 1982.

ARGUMENT

I

RACIAL DISCRIMINATION IN THE ASSIGNMENT OF MEMBERSHIPS IN LITTLE HUNTING PARK, INC., VIOLATES SECTION 1 OF THE CIVIL RIGHTS ACT OF 1866

The central question in this case is whether the "property" clause of Section 1 of the Civil Rights Act of 1866, now codified as 42 U.S.C. 1982, prohibits the respondents' conduct—conduct which has effec-

tively denied to the Freemans, on account of their race, access to the community recreational facilities available to all other residents as an incident of their ownership or lease of property in the area. The matter is largely settled by *Jones v. Mayer Co.*, 392 U.S. 409, which construed the statute as reaching wholly private discrimination with respect to the sale of real estate—a ruling which necessarily applies to all transactions covered by 42 U.S.C. 1981 and 1982, since both provisions derive from a single clause of Section 1 of the Act of 1866.³ In light of *Jones*, the only *property* issue here is whether the assignment of the membership share in the Little Hunting Park is a transaction protected by that section. That is presumably an aspect

³ Section 1 of the Civil Rights Act of 1866 (14 Stat. 27) read as follows:

"That all persons born in the United States and not subject to any foreign power, excluding Indians not taxed, are hereby declared to be citizens of the United States; and such citizens, of every race and color, without regard to any previous condition of slavery or involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall have the same right, in every State and Territory in the United States, to make and enforce contracts, to sue, be parties, and give evidence to inherit, purchase, lease, sell, hold, and convey real and personal property, and to full and equal benefit of all laws and proceedings for the security of person and property, as is enjoyed by white citizens, and shall be subject to like punishment, pains, and penalties, and to none other, any law, statute, ordinance, regulation, or custom, to the contrary notwithstanding."

The "property" clause became separated when the rest of the provision, slightly expanded and made applicable to resident aliens as well, was re-enacted in *haec verba* as Section 16 of the Enforcement Act of May 31, 1870 (16 Stat. 140, 144). The property guarantee remained available to citizens alone as part of the 1866 Act, the whole of which was re-enacted (by refer-

of the question expressly left open by the Court's opinion in *Jones*. 392 U.S. at 413-414 n. 10.⁴ Because, in our view, Section 1982 clearly covers the case, we do not here invoke Section 1981.⁵ See, however, the government's brief *amicus curiae* in *Daniel v. Paul*, No. 488, O.T., 1968, pp. 9-14.

A. SECTION 1982 BARS RESPONDENT'S CONDUCT

1. *The share is an incident of real property covered by Section 1982*

We think there could be no doubt that had the membership shares in Little Hunting Park, Inc., been part of a unified development plan, as in communities such as Reston, Virginia, or the apartment-town house complexes of Southwest Washington, D.C., Section

ence only) by Section 18 of the Enforcement Act of 1870. This division was formalized in the Revised Statutes of 1878, the "property clause" being codified as Section 1978, the rest as Section 1977, and persists today in Sections 1982 and 1981 of Title 42 of the United States Code.

⁴ After pointing out that 42 U.S.C. 1982, unlike the recently enacted Fair Housing Law, "does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling" (392 U.S. at 413-414), the Court added, in the margin (n. 10):

In noting that 42 U.S.C. § 1982 differs from the Civil Rights Act of 1968 in not dealing explicitly and exhaustively with such matters * * *, we intimate no view upon the question whether ancillary services or facilities of this sort might in some situations constitute "property" as that term is employed in § 1982. Nor do we intimate any view upon the extent to which discrimination in the provision of such services might be barred by 42 U.S.C. § 1981 * * *.

⁵ Although petitioners did not plead either Section 1982 or Section 1981 as a ground for relief, their suits were brought before this Court's decision in *Jones*, and the Court therefore may

1982 would forbid the developer from selling or leasing quarters to whites with, and to Negroes without, access to the community's recreational facilities. The statute guarantees all citizens "the same right * * * as is enjoyed by white citizens * * * to * * * purchase, lease * * * real property." (Emphasis added.) Implicit in that guarantee is the right to the same use and enjoyment of the property and all its incidents as a white citizen would receive. As the record shows, community recreational facilities, especially swimming pools, are a major factor affecting the desirability and value of residential property. The routine exclusion of Negroes from such facilities would both discourage them from buying in that community, and make any purchase they did make a poorer bargain than that a white citizen could obtain. "Solely because of their race, non-Caucasians will be unable to purchase, own [rent] and enjoy property on the same terms as Caucasians." *Barrows v. Jackson*, 346 U.S. 249, 254. It would be inconsistent with this Court's interpretation of § 1982 in *Jones* for the statute to be interpreted as meaning that a Negro has the same right to buy or lease property as a white citizen but can be precluded from enjoying some of the incidents thereof on the basis of his race.⁶

consider issues arising under the statute, *United States v. The Schooner Peggy*, 1 Cranch 103, 110, as it recognized by its prior disposition of this case, 392 U.S. 657. See *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 142-143; *Hamm v. City of Rock Hill*, 379 U.S. 306.

⁶ Evidence that the contemporary Congress does not distinguish between discriminating in the leasing of real property and the incidents thereof may be found in the Civil Rights Act of 1968,

The legislative history cited by this Court in *Jones* makes it reasonably clear that the Congress which originally enacted § 1982 in an effort to eliminate the badges of slavery did not intend to preclude discrimination only in the actual sale or rental of the dwelling involved, allowing it to continue with reference to the incidents of ownership or possession. Thus, in his speech of January 5, 1866, Senator Trumbull said:

This measure is intended to give effect to that declaration [the Thirteenth Amendment] and secure to all persons within the United States practical freedom. *There is very little importance in the general declaration of abstract truths and principles unless they can be carried into effect, unless the persons who are to be affected by them have some means of availing themselves of their benefits.*⁷

Such language negatives any attempt to read the statute narrowly. So here, there is no reason to suppose that Section 1982 makes an empty promise (see *Jones*, 392 U.S. at 443), which is satisfied if Negroes are allowed to buy or rent homes but are, in practical effect, banned from the neighborhood by being denied access to a community recreation facility which is, for white persons, a valuable incident of the possession of real property. The present case involves, at least, an obvious abridgement or dilution of the right to acquire a home, when the Negro is told: You may

Section 804(b), which makes it unlawful to "discriminate against any person in the * * * sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color * * *."

⁷ Cong. Globe, 39th Cong., 1st Sess., p. 474, quoted at 392 U.S. at 431-432; emphasis supplied.

buy or rent a house, but you may not acquire the right to use any of the community facilities which are open to your white neighbors. It seems plain that this result cannot be condoned without breaking the statutory pledge to the Negro that he shall enjoy "the same right * * * as white citizens."

Section 1982 is no less applicable here because the facilities are provided by a separate and ostensibly private membership corporation to which only some of the houses in the communities served belong, but which has as its only expressed standard for membership the geographic location of the house concerned. We cannot accept the trial court's view that Little Hunting Park is a private social club, and therefore free to discriminate on racial grounds in membership matters. Every adult owning or leasing a house in the prescribed geographic area is eligible, without further qualification, recommendation, or nomination, to become a member. Save for this instance and possibly one other—which for all the record shows may have been like it—the assignment or sale of shares from owner to tenant or purchaser has always been routinely approved; 322 such assignments were made between 1955 and 1966 (A. 125-126). Access to the pool is simply as aspect of living in the area, subject only to paying for the privilege.

The case is in this respect much like the situation this Court confronted last Term in *Daniel v. Paul*, 395 U.S. 298. The "club" involved there was a large one, serving people from miles around; visitors purchased a low-cost "membership" each season and also

paid to use certain facilities on each visit; such memberships were routinely issued to all whites who sought them, but refused to Negroes. Little Hunting Park is much smaller in size, intended for the use and enjoyment of a limited number of families in a smaller geographic area; the initial membership charge is high and yearly fees are assessed so that it may meet expenses. But the administration of its membership policies precisely tracks that which characterized *Daniel v. Paul*: subject to the availability of memberships,⁸ any white adult living in the community could join; Negroes could not.

Just as in *Daniel v. Paul*, such a policy does not justify characterization of the facility as a private club. "Membership" which may be conveyed, assigned, and held by a corporation, and which is based on geography alone,¹⁵ is the very antithesis of the private social club. Thus, the Fourth Circuit has held that an establishment's "serving or offering to serve all members of the white population within a specified geographical area is certainly inconsistent with the nature of a truly private club." *Nesmith v. YMCA of Raleigh, N.C.*, 397 F.2d 96, 102. See also *Rockefeller Center Luncheon Club, Inc. v. Johnson*, 131 F. Supp. 703 (S.D.N.Y.); *United States v. Richberg*, 398 F.2d 523 (C.A. 5). The hallmarks of the private club are missing here: membership is not even personal to any individual; nor is any attempt made to achieve any sort of compatibility of background or interest, save geography. There is

⁸ In 1965, the year in question, 36 memberships were available. Memberships were available in 7 of Little Hunting Park's first 12 years (see A. 144).

thus no more occasion in this case than there was in *Daniel v. Paul* to consider whether the Civil Rights Act of 1866 applies to bona fide private clubs; our submission is only that when a privilege which for all others is incident to housing has been denied for reasons of race, the statute is brought into play.

Nor do we think the fact that not all houses in the eligible community belonged to Little Hunting Park impeaches our conclusion that the membership Dr. Freeman was denied was an incident of the real property he had leased. For individuals free to join or not as they chose, the availability of the facilities still adds value to the land which cannot be realized by persons barred from membership on racial grounds. As a matter of regular practice, shares in Little Hunting Park do run with titles to realty and with leasehold interests on houses for which membership shares are outstanding. The record shows (A. 99-108) that northern Virginia generally lacks governmentally owned and operated recreational facilities; there are only a few privately owned establishments open to the general public. The record also supports the conclusion that a community swimming pool facility is a major factor affecting the desirability and value of residential property.

Moreover, once an individual has purchased membership in Little Hunting Park, its racially discriminatory membership policy exercises considerable leverage over his future transactions involving his own home. The purchase is a considerable investment, which enhances the value of his home and which he will wish to protect. Sale of the home to a Negro, who

could not purchase the share, is distinctly less advantageous to him than sale to a white.⁹ Similarly, since the corporation prohibits assignments to anyone other than a tenant and requires annual payment of assessments to keep memberships valid whether or not they are used, rental of a home to a Negro is less advantageous than to a white willing to pay the assessment for the privilege of using the facilities. Given the absence of alternative public facilities, Negroes are discouraged from living in the community. Any Negro who does purchase or rent such a home must pay a "race tax" for the membership rights he is forbidden to use. See *Contract Buyers League v. F & F Investment*, 300 F. Supp. 210, 215-216 (N.D. Ill.).

We conclude that the action of Little Hunting Park constitutes a violation of § 1982 relative to Dr. Freeman's right to rent real property and enjoy the use of the appurtenance privileges.

2. *The share, as personal property, is covered by Section 1982.*

In *Jones* the Court held that Section 1982 not only proscribed racial discrimination denying the Negro "the right to live wherever a white man can live," but also conduct denying the Negro "the freedom to buy whatever a white man can buy." 392 U.S. at 443. Apart from its intimate connection with real property, a Little Hunting Park share is a chattel which has an inherent value, is freely transferable among whites

⁹ Little Hunting Park's bylaws do not obligate it to repurchase membership shares except in cases of expulsion. A. 29, 125.

by sale or assignment,¹⁰ and carries with it the privilege and land benefits incident to its possession, namely membership in Little Hunting Park. As such, it has all the attributes generally associated with personal property and, we submit, should be regarded as personalty similar to a share of stock in a corporation. See *Hyde v. Woods*, 94 U.S. 523; *Page v. Edmunds*, 187 U.S. 596; *Baird v. Tyler*, 185 Va. 601, 39 S.E. 2d 642, 645-646; cf. *Travelers Health Association v. Commonwealth*, 188 Va. 877, 51 S.E. 2d 263, affirmed on other grounds, 339 U.S. 643; *Securities and Exchange Commission v. Universal Service Association*, 106 F. 2d 232 (C.A. 7); *Davenport v. United States*, 260 F. 2d 591 (C.A. 9).¹¹

¹⁰ Again, the fact that any transfer or assignment must be "approved" by the Board of Directors before it becomes effective against the corporation does not, in the circumstances here, impair the conclusion of free transferability. So far as the record shows, denial of approval is used only to preserve the racial homogeneity of Little Hunting Park. A device thus limited to what the statute forbids is clearly not to be considered as determining whether or not the statute applies.

¹¹ We do not consider dispositive the fact that under Virginia law a Little Hunting Park share is deemed a security and, as such, is regarded as personal property (Code of Virginia, § 13-105 (1950), 13.1-211 (1964)). In light of *Jones*, the federal courts will be called upon to develop a body of law as to what, for example, constitutes "property" under Section 1982 and "contracts" under Section 1981. That determination should not be made subject to the laws of the 50 State jurisdictions. *Erie R. Co. v. Tompkins*, 304 U.S. 64, notwithstanding, it is clear that regarding questions within the area of federal legislative jurisdiction, the federal courts are authorized to develop federal law, in order to assure the necessary uniformity of disposition. E.g., *Clearfield Trust Co. v. United States*, 318 U.S. 363; *Textile Workers v. Lincoln Mills*, 353 U.S. 448, 457; *Howard v. Lyons*, 360 U.S. 593, 597. See also *United States v. Standard Oil Co.*, 332 U.S. 301, 307.

For the reasons elaborated above, Little Hunting Park's refusal to approve Sullivan's assignment to Freeman should be held to be violative of the statute. The right to purchase or lease is surely meaningless unless the statute also reached the conduct of those who have it within their power to prevent the Negro from enjoying the rights transferred. Otherwise, the Negro buys nothing. Unless one is prepared to assume that Negroes will continue to buy even when apprised that their money will purchase only a certificate and not also the rights that generally run with it, Little Hunting Park will be able to subvert the purpose and intention of the statute. Cf. *Barrows v. Jackson*, 346 U.S. 249.

B. SUBSEQUENT ENACTMENT OF A PUBLIC ACCOMMODATIONS LAW IN 1875 DOES NOT INDICATE THAT THE RIGHTS CLAIMED HERE WERE BEYOND THE SCOPE OF THE 1866 LEGISLATION

What has been said sufficiently shows that Section 1 of the Civil Rights Act of 1866, on its face, reaches the discriminatory policy of Little Hunting Park. A question arises, however, whether the right to equal enjoyment of facilities like those involved here must be deemed excepted from the coverage of the 1866 Act because that matter is governed by special laws dealing with "places of public accommodation." We confront the issue because it seems to us the facilities of Little Hunting Park do, indeed, serve the role of places of public accommodation.

The argument that the Civil Rights Act of 1866 does not embrace places of public accommodation

would focus initially on the Civil Rights Act of 1875¹² (18 Stat. 335) held unconstitutional in the *Civil Rights Cases*, 109 U.S. 3. The suggestion would be that this roughly contemporaneous statute must be looked to as exclusively regulating this subject.

1. At the outset, we stress that there can be little doubt that the draftsmen of the 1866 Act believed they were reaching places of public accommodation. The 39th Congress, which passed the First Civil Rights Act and framed the Fourteenth Amendment, legislated against a background of common law rules affording members of the public not suffering from racial disability a legal right to use public conveyances and to obtain service in inns and hotels. See, e.g., Frank and Munro, *The Original Understanding of "Equal Protection of the Laws,"* 50 Colum. L. Rev. 131, 149-153; *Civil Rights Cases*, 109 U.S. 3, 37-43 (Harlan J., dissenting); *Bell v. Maryland*, 378 U.S. 226, 295-299 (Goldberg, J., concurring). Accordingly, it may be supposed that the declaration of citizenship and of the right to purchase property and to make and enforce contracts in Section 1 of the 1866 Act was meant, at the least, to confer on Negroes the "same right" to the services of public accommodations as white citizens had enjoyed. Compare

¹² In speaking of the Civil Rights Act of 1875 we refer to Sections 1 and 2, which dealt exclusively with places of public accommodation. Section 4 of the Act, outlawing racial discrimination in jury selection, was vindicated in *Ex Parte Virginia*, 100 U.S. 339, and is today codified as 18 U.S.C. 243. Sections 3 and 5 were jurisdictional provisions, presumably applicable to the whole of the Act.

Ferguson v. Gies, 82 Mich. 358, 365; *Donnell v. State*, 48 Miss. 661. Indeed, opponents of the Freedmen's Bureau bill and the Civil Rights Act argued, without contradiction, that those measures would afford Negroes the right to equal treatment in places of public accommodation. See Cong. Globe, 39th Cong., 1st Sess., 541, 936; *id.* App. 70, 183 (Representatives Dawson and Rousseau, Senator Davis); *Jones v. Mayer Co.*, *supra*, 392 U.S. at 433, 435 n. 68. Presumably, the proponents of the Act offered no denial because they recognized that this was, indeed, one inevitable consequence of granting Negroes equality before the law, even in the narrowest sense. See *Coger v. North West Union Packet Co.*, 37 Iowa 145 (1873); Flack, *The Adoption of the Fourteenth Amendment* 11-54 (1908). See also Supplemental Brief for the United States as *Amicus Curiae*, Nos. 6, 9, 10, 12, and 60, O.T. 1963, pp. 119-130.

This reach of the 1866 Act was made clearer by the re-enactment of the measure in 1870, after the adoption of the Fourteenth Amendment, which had confirmed the grant of citizenship to Negroes and explicitly guaranteed "equal protection of the laws." See *Jones v. Mayer Co.*, *supra*, 392 U.S. at 436-437. That understanding is reflected in the protracted congressional debates on the proposals which culminated in the Civil Rights Act of 1875, debates premised on the same concept of "civil" rights which underlay the declaration of rights in the 1866 Act. See Cong. Globe, 42d Cong., 2d Sess., pp. 381-383 (Senator Sumner); Gressman, *The Unhappy History of Civil Rights Legislation*, 50 Mich. L. Rev. 1323-1336. There was, in-

deed, specific reference to an existing duty to afford Negroes equal treatment in places of public accommodation. As the Chairman of the House Judiciary Committee, Representative Butler of Massachusetts told his colleagues, the bill which ultimately was enacted as the Civil Rights Act of 1875¹³—

* * * gives to no man any rights which he has not by law now, unless some hostile State statute has been enacted against him. He has no right by this bill except what * * * every man * * * has by the common law and civil law of the country.

2. The question remains: If freedom from racial discrimination in places of public accommodation was already a federal right—secured by the Civil Rights Act of 1866, re-enacted in 1870—why then did Congress address itself to the subject again in 1875?

We might simply offer the short answer given for the Court by Mr. Justice Holmes in *United States v. Mosley*, 238 U.S. 383, 387, rejecting the argument that 18 U.S.C. 241 should not be read as reaching interference with voting rights because they were specifically dealt with elsewhere: “Any overlapping that there may have been well might have escaped attention, or if noticed have been approved.” Redundancy is not rare in legislation of the period. See, *e.g.*, the overlap of Sections 241 and 242 of the Criminal Code as applied to rights protected by the Fourteenth Amendment, noticed in *United States v. Williams*, 341 U.S. 70, 78 (opinion of Frankfurter, J.), 88 n. 2 (opinion of Douglas, J.), and condoned in *United*

¹³ 2 Cong. Rec. 340.

States v. Price, 383 U.S. 787, 800-806, 802 n. 11. This may be no more than another instance of duplication. But there is another explanation for the Civil Rights of 1875.

It is most likely, we think, that the 1875 law was enacted not to afford a new guarantee of equality in public accommodations, but to provide a more effective means, through federal enforcement, of vindicating rights which already had been recognized. The 1866 law provided no specific civil remedy for violation of the rights enumerated in Section 1, and its criminal provisions were applicable only to conduct done "under color of law." See Section 2 of the Act, now 18 U.S.C. 242. Negroes who were denied equal treatment in places of public accommodation were thus forced to seek redress under State law or through the uncertain remedies which might be available in the federal courts. See *Jones v. Mayer Co.*, *supra*, 392 U.S. at 414 n. 13. The debates on the 1875 law demonstrated an awareness of the need for more effective enforcement of the right: "the remedy is inadequate and too expensive, and involves too much loss of time and patience to pursue it. When a man is traveling, and far from home, it does not pay to sue every innkeeper who, or railroad company which, insults him by unjust discrimination" (2 Cong. Rec. 4082 (Senator Pratt)).

The congressional response to this problem was the dramatically enlarged federal role assumed by Section 2 of the 1875 Act. Although earlier laws had confined criminal penalties for interference with civil rights (other than voting) to official conduct or con-

spiracies, Section 2 made it a federal offense (a misdemeanor) for *any* person, even acting privately and alone, to deny equal treatment in public accommodations. And Section 3 directed federal officials to initiate prosecutions under the Act. Section 2 also provided for a fixed penalty of \$500 which the aggrieved person could recover from the violator in a civil action exclusively in a federal court. In short, the apparent purpose and effect of the Civil Rights Act of 1875 was to focus particularly on one of the many rights secured by the 1866 Act which was appropriate for especially stringent federal enforcement. That is, of course, a fully adequate basis for the enactment of supplementary legislation.

C. THIS COURT'S DECISION IN THE *CIVIL RIGHTS CASES* IS NOT A
VIALE OBSTACLE TO OUR CONCLUSION

A question remains whether the decision in the *Civil Rights Cases*, 109 U.S. 3, does not foreclose our conclusion that the Civil Rights Act of 1866 outlaws racial discrimination in places of public accommodations. There are two possible difficulties: the first premised on the holding that the Act of 1875 was unconstitutional; the second on the distinction drawn in the opinion between the 1875 Act and the Civil Rights Act of 1866.

1. Insofar as the *Civil Rights Cases* denied the power of Congress under the Thirteenth and Fourteenth Amendments to reach racial discrimination in privately owned places of public accommodation, we think it plain that the authority of that ruling has been eroded by later decisions. The underlying premise

of the Fourteenth Amendment holding in the *Civil Rights Cases*—that legislation enforcing the Equal Protection Clause can only reach discriminatory conduct by persons invoking the shield of State law—was rejected by a majority of the Court in *United States v. Guest*, 383 U.S. 745, 762 (Clark, J., concurring), 781–784 (opinion of Brennan, J.). But, for present purposes, it is enough to notice that the narrow view taken in the *Civil Rights Cases* with respect to congressional power under the Thirteenth Amendment is inconsistent with *Jones v. Mayer Co.*, *supra*.

We recognize that the Court in *Jones* did not, in terms, overrule the Thirteenth Amendment holding of the *Civil Rights Cases*; there being no occasion to confront the ruling directly. See 392 U.S. at 441 n. 78. But the Court did expressly hold that Section 2 of the Thirteenth Amendment authorizes legislation which does more than merely restore legal capacity to former slaves. Thus, it was stated that “Congress has the power under the Thirteenth Amendment rationally to determine what are the badges and the incidents of slavery, and the authority to translate that determination into effective legislation” (392 U.S. at 440). Accordingly, the Court expressly overruled *Hodges v. United States*, 203 U.S. 1, a decision holding—on the authority of the *Civil Rights Cases*—that Section 1981 could not validly bar racial discrimination affecting a contract of employment (392 U.S. at 441–443 n. 78). And, in language fully applicable here, the Court broadly held (392 U.S. at 443):

Negro citizens North and South, who saw in the Thirteenth Amendment a promise of free-

dom—freedom to “go and come at pleasure” and to “buy and sell when they please”—would be left with “a mere paper guarantee” if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. * * * [Notes omitted.]

The thrust of the *Jones* opinion, we submit, is that it is *not* “running the slavery argument into the ground”—as the majority in the *Civil Rights Cases* supposed (109 U.S. at 24)—to concede congressional power to attempt to eradicate the vestiges of the slave system wherever they persist in the public life of the community. Whatever the validity in 1883 of viewing admission to places of public accommodations as a mere matter of “social rights” (109 U.S. at 22) and characterizing the discriminatory exclusion by the proprietor as involving only a discretionary decision “as to the guests he will entertain” (109 U.S. at 24), that approach does not conform to the present reality. Cf. the opinion of Mr. Justice Douglas, concurring, in *Bell v. Maryland*, 378 U.S. 226, 245–246, 252–283. In light of the old common law obligation, imposed on at least some operators of public accommodations, it is difficult to appreciate that the privilege of obtaining entry and service without arbitrary discrimination was ever a mere “social” matter. But, at all events, it is today more properly deemed a “civil

right." Cf. *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 251. In sum, we believe the constitutional power of Congress under the Thirteenth Amendment to reach racial discrimination in modern places of public accommodations is no longer open to doubt.

2. We have already elaborated our view that the Congress of 1866 meant to outlaw the kind of discrimination revealed by this record. Even assuming the constitutionality of such an effort, however, the *Civil Rights Cases* may be invoked as apparently reaching the opposite conclusion, as a matter of statutory construction.

The objection, once again, is largely answered by the decision in *Jones v. Mayer Co.* Insofar as the prevailing opinion in the *Civil Rights Cases* characterizes the Civil Rights Act of 1866—in contrast to the Act of 1875—as merely removing legal “disabilities” (see 109 U.S. at 22), without in any way controlling the freedom of sellers to discriminate on racial grounds, that view has been squarely rejected by the Court. *E.g.*, 392 U.S. at 418–419, 436. We add only that, assuming the 1866 Act can properly be read as impliedly exempting certain personal transactions, and assuming further there was once a basis for considering a right of access to a place of recreation as outside the scope of the Act, present circumstances would now justify treating such a transaction as covered.

**D. THE PUBLIC ACCOMMODATIONS LAW OF 1964 DOES NOT AFFECT
THE COVERAGE OF THE 1866 ACT**

One final objection suggest itself: that enactment in 1964 of a Public Accommodations Law as Title II

of the Civil Rights Act of that year (42 U.S.C. 2000a *et seq.*), in some way supersedes the provisions of the 1866 Act insofar as they deal with the same subject matter. Here, too, *Jones v. Mayer Co.* indicates the answer by rejecting a comparable argument premised on an interpretation of the Fair Housing Title of the Civil Rights Act of 1968 (42 U.S.C. 3601 *et seq.*) as repealing or qualifying the "property" provision of the 1866 statute.

1. Of course, the understanding of the legislators of 1964 as to the intent of their predecessors a century earlier is only very remotely relevant. Certainly, it cannot override the clear indications given in 1866 and in 1875 that the original Civil Rights Act reached places of public accommodations. Accordingly, just as the Court did not look to the drafters of the Fair Housing Law of 1968 to determine the scope of the 1866 Act with reference to the issues before it in *Jones*, here the Court's construction of the Act should not be affected by the views prevailing in the 88th Congress. Nor is it even important to know what those views were: whether one assumes that the Act's full scope was or was not appreciated in 1964, it is clear that Title II of the Civil Rights Act of that year was not intended to repeal or supersede or amend the old statute.

2. We note first—as the Court did in *Jones* (392 U.S. at 413-417)—that there are substantial differences between the new laws and the old. For example, Title II of the 1964 Act prohibits discrimination on the basis of "race, color, religion, or national origin"

(Section 201(a)), while the 1866 Act presumably applies only to race or color discrimination. Although the 1866 Act, on its face, prohibits all racially motivated denials of the rights it protects, Title II applies only to certain types of establishments having some nexus with interstate commerce (Sections 201(b), 201(c)). The 1866 Act is couched in declaratory terms, without reference to any particular mode of enforcement, whereas Title II embodies a specific remedy provision (Section 204(a)). Significantly, the new law—unlike the old—expressly provides for enforcement at the instance of the Attorney General (Section 206), and the 1964 Act also created a Community Relations Service to assist in the private settlement of disputes relating to discriminatory practices (Title X, Sections 1001–1004, 42 U.S.C. 2000g–2000g–3) to which the courts may refer cases brought under Title II for the purpose of achieving voluntary compliance (Section 204(d)).

In many respects the differences are comparable to those between the 1866 Act and the 1968 housing law which the Court noticed in *Jones*. Here, too, the old law is “a general statute applicable only to racial discrimination * * * and enforceable only by private parties acting on their own initiative,” while the new legislation is a “detailed” and specialized enactment “enforceable by a complete arsenal of federal authority” (392 U.S. at 417). Accordingly, if we assume that the Congress of 1964 recognized the vitality and applicability of the Civil Rights Act of 1866—an assumption apparently indulged by the Court in *Jones* with respect to the drafters of the

1968 housing law—Title II can properly be viewed as special supplementary legislation, replacing the nullified Act of 1875, but leaving the 1866 Act untouched.

3. It may be objected that our conclusion is sound only insofar as it focuses on those provisions of Title II which *add* substantive guarantees or remedial machinery and ignores the fact that the new law in some respects *retrenches* on the broad coverage of the 1866 Act. The answer is that, confronted with the same situation with respect to the 1968 housing law, the Court in *Jones* did not on that account find a *pro tanto* repeal; the same result is compelled here.

There are of course many possible explanations for the limitations of the 1964 Act. Some were merely responsive to the Commerce Clause approach of the legislation and then prevailing constitutional doubts concerning the scope of congressional power under the Thirteenth and Fourteenth Amendments. Most likely, the full reach of the 1866 Act in this area was not then appreciated.¹⁴ But it does not follow that the Act repealed *sub silentio*. On the contrary, Title II expressly preserves pre-existing rights under Federal law and that provision must of course be honored whether or not it was then recognized that

¹⁴42 U.S.C. 1981 and 1982 were briefly noted in the hearings on the Civil Rights Act as at least prohibiting State-sanctioned discrimination in places of public accommodation (Hearings on S. 1732 before the Senate Committee on Commerce, 88th Cong., 1st Sess., p. 134 (Senator Prouty and Attorney General Kennedy)). It does not appear, however, that Congress understood those infrequently-used statutes to have the reach which has been confirmed by this Court's construction in *Jones*.

the 1866 Act was operative with respect to public accommodations. Cf. *Jones v. Mayer, supra*, 392 U.S. at 437.

4. The savings clause is as follows (Section 207(b) of the Act, 42 U.S.C. 2000a-6(b)):

* * * [N]othing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right.

It will be noticed that only rights under laws "not inconsistent" with Title II remain enforceable. That is no obstacle here, however. To the extent that the 1866 Act prohibits racial discrimination by establishments which are not covered by Title II, it is not "inconsistent" with the 1964 Act in the ordinary sense that it contradicts the basic purpose of the new law; it obviously is designed to vindicate the same right. Moreover, the reference to State statutes and local ordinances makes it clear that a law with a more generous coverage was not "inconsistent" in the sense used here. For it goes without saying that Congress did not intend to invalidate State provisions which reach places of public accommodation left unregulated by the new federal law. It would be turning the statute on its head to read into it a purpose to confer on owners of non-covered establishments a federal right to practice racial discrimination, notwithstanding local legislation prohibiting it.

The conclusion that the Civil Rights Act of 1866, which implements the Thirteenth Amendment, was repealed insofar as it applies to establishments not covered under Title II can rest only on the premise that Congress deliberately determined in 1964 that the Commerce Clause was to be the exclusive basis for *all* federal regulation in respect to racial discrimination in public accommodations. There is no evidence of any such determination. Cf. *United States v. Johnson*, 390 U.S. 563, 566-567.¹⁵ Nor is there any other indication that Congress meant to repeal the Civil Rights Act of 1866 in this respect. The result is that the 1866 Act stands unimpaired.

II

PETITIONER SULLIVAN HAS STANDING TO SEEK RELIEF UNDER THE STATUTE IN CONSEQUENCE OF THE INJURIES HE SUFFERED IN OBEYING IT

We submit that petitioner Sullivan's standing to maintain this action is governed by *Barrows v. Jackson*, 346 U.S. 249. In that case a white seller of real estate was sued by co-covenantors under a racially restrictive covenant for damages they alleged to have been caused by her breach of the covenant through sale to a Negro. She attacked the resulting damage judgment against her as state action enforcing the restrictive covenant, and, therefore, denying equal

¹⁵ We note that our interpretation of Section 207(b), since it relates to the enforcement by *individuals* of rights not specifically provided by Title II, is also fully consistent with the position taken in the dissenting opinion in *United States v. Johnson*, see 390 U.S. at 568 n. 1.

protection of the laws to Negroes in violation of the Fourteenth Amendment. This Court was required to decide, *inter alia*, whether the seller had standing to assert that claim, since the right apparently ran only to a third party, the Negro purchaser. The holding was that she did. The Court found the direct pocket-book injury to her, and the necessary effect of an award of damages in giving vitality to the restrictive covenant through the agency of the state, together sufficient to support her claim of another's right.

Petitioner Sullivan's right to rely on the statute in this case is *a fortiori*. The statute involved is not limited in terms to apply to non-white citizens, nor does it confer protection solely on the person directly discriminated against. This Court has acted under it to strike down a zoning ordinance on the ground, *inter alia*, that it offended "the civil right of a white man to dispose of his property if he saw fit to do so to a person of color." *Buchanan v. Warley*, 245 U.S. 60, 81. Here, as the Court emphasized was not the case in *Barrows*, the private action involved in refusing to honor the assignment was itself illegal. To discourage such activity, relief should be available to all persons injured by it, or as a consequence of their efforts to resist it. A contrary holding would put an unfair burden on the white man who seeks to deal with the Negro in conformity to the statutory command, and ultimately impede Negroes' ability to enforce their rights in the marketplace.

III

PETITIONERS ARE ENTITLED TO COMPENSATORY DAMAGES
AS RELIEF UNDER SECTION 1982

The provisions of Section 1 of the Civil Rights Act of 1866 are couched in declaratory terms, stating no explicit method of enforcement. To the extent injunctive relief on the complaints is still appropriate, *Jones* makes clear that it is within the authority of a federal court to grant it, 392 U.S. at 414 n. 13; since that is an established federal remedy, it is available in any state court where protection of the federal right is sought, if that court is empowered to grant injunctive relief generally. See Code of Virginia § 8-610 (1957). Petitioner Freeman, however, limited his request for injunctive relief to his own particular circumstances (A. 18-19). Since he is no longer possessed of the premises, that request now appears to be moot. It is thus necessary for the Court to reach a second question which it put aside in *Jones*, whether compensatory damages may be had for violation of the rights guaranteed by the Act.¹⁶ 392 U.S. at 414-415 n. 14.

We think it plain that compensatory damages are available. As a general rule, federal district courts have jurisdiction over any action to "recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil

¹⁶ Here, as in *Jones*, any question of punitive damages under the statute is foreclosed; the action complained of predated by several years the interpretation of the statute announced in *Jones*.

rights," 28 U.S.C. 1343(4). While this jurisdictional provision does not create a damage remedy, it indicates that Congress anticipated such awards would be made under the civil rights acts generally. Further, courts have "the power to afford all remedies necessary to the vindication of federal substantive rights defined in statutory and constitutional provisions except where Congress has explicitly indicated that such remedy is not available." *Brewer v. Hoxie School District No. 46*, 238 F.2d 91, 98 (C.A. 8); *Bell v. Hood*, 327 U.S. 678, 684; see also *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U.S. 548, 569-570; *Porter v. Warner Co.*, 328 U.S. 395, 398; *Mitchell v. DeMario Jewelry*, 361 U.S. 288, 291-292; *State of Alabama v. United States*, 304 F.2d 583, 590-591 (C.A. 5), affirmed, 371 U.S. 37; *J. I. Case Co. v. Borak*, 377 U.S. 426, 433. Were the judicial responsibility viewed otherwise, the courts would "impute to Congress a futility inconsistent with the great design of this legislation." *United States v. Republic Steel Corp.*, 362 U.S. 482, 492.

In a word, the existence of the statutory right implies the existence of all necessary remedies. *Texas & N.O.R. Co. v. Ry. Clerks*, *supra*, 281 U.S. at 569-570. Thus, if a statute proscribes specified acts and those acts are nonetheless committed, this Court's decisions support the view that the party injured shall have available all recognized avenues of relief in order that he be made whole. As this Court explained in *Texas & Pacific Ry. Co. v. Rigsby*, 241 U.S. 33, 39:

A disregard of the command of the statute is a wrongful act, and where it results in dam-

age to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied, according to a doctrine of the common law * * *, in these words: "So, in every case, where a statute enacts, or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to the said law."¹⁷

And see 42 U.S.C. 1988.

Both for purposes of realistically compensating the Negro for any harm done, and for purposes of deterring disobedience of the law, this Court should hold that damages are recoverable. We suggest that while the rules governing damage awards under these provisions must be federal rules, not dependent upon the laws of the various states, see n. 11 *supra*, p. 19, the matter should be left for initial resolution to the trial court. That court should, however, be instructed to consider the matter within the proper context, *i.e.*, within the context of the overall statutory purpose, and with an eye to fully vindicating the federally protected rights without reference to the limitations or peculiarities of Virginia law.

¹⁷ In *Rigsby* the Court held that injury suffered as the result of the violation of a criminal statute could be redressed in civil, injunctive proceedings. Accord, *J. I. Case Co. v. Borak*, *supra*. See also *Wyandotte Co. v. United States*, 389 U.S. 191, 202. Similarly, the Court has held that when a statute provides that damage awards to injured parties will be available for violation of the law, the right of such persons to seek equitable, injunctive relief is implied. *Deckert v. Independence Shares Corp.*, 311 U.S. 282.

CONCLUSION

For the foregoing reasons, we urge that the judgment be reversed and the case remanded to the state courts for the entry of an order granting appropriate relief. ~~the case remanded to the appropriate court for the~~

ERWIN N. GRISWOLD,
Solicitor General.

JERRIS LEONARD,
Assistant Attorney General.

LOUIS F. CLAIBORNE,
PETER L. STRAUSS,
JOSEPH J. CONNOLLY,
Assistants to the Solicitor General.

GARY J. GREENBERG,
Attorney.

SEPTEMBER 1969.

FILE COPY

Office-Supreme Court, U.S.
FILED

No. 33

OCT 7 1969

JOHN F. DAVIS, CLERK

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

PAUL E. SULLIVAN, ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

*On Writ of Certiorari to the
Supreme Court of Appeals of Virginia*

PETITIONERS' SUPPLEMENTAL BRIEF

ALLISON W. BROWN, JR.
Suite 501, 1424 16th Street, N.W.
Washington, D. C. 20036

PETER AMES EVELETH
217 Fifth Street, S. E.
Washington, D. C. 20003

ROBERT M. ALEXANDER
2011 S. Glebe Road
Arlington, Virginia 22204
Attorneys for Petitioners

JACK GREENBERG
JAMES M. NABRIT, III
10 Columbus Circle
New York, New York 10019
Of Counsel

(i)

TABLE OF CITATIONS

	Page
<i>Cases:</i>	
Automobile Workers v. Russell, 356 U.S. 634	2
Greenberg v. Western Turf Ass'n, 140 Cal. 357, 73 P. 1050, aff'd 148 Cal. 126, 82 P. 684, aff'd 204 U.S. 359	3
Jones v. Mayer Co., 392 U.S. 409	2, 3
Linn v. Plant Guard Workers, 383 U.S. 53	2
Richmond Passenger & Power Co. v. Robinson, 100 Va. 394, 41 S.E. 719	3
Scott v. Donald, 165 U.S. 58	2
United Construction Workers v. Laburnum Construction Corp., 347 U.S. 656	2
Wood v. American National Bank, 100 Va. 306, 40 S.E. 931 ...	3
<i>Miscellaneous:</i>	
McCormick, Law of Damages (1935)	3

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1969

No. 33

PAUL E. SULLIVAN, ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

T. R. FREEMAN, JR., ET AL., PETITIONERS

v.

LITTLE HUNTING PARK, INC., ET AL.

*On Writ of Certiorari to the
Supreme Court of Appeals of Virginia*

PETITIONERS' SUPPLEMENTAL BRIEF

The United States, in its brief as *amicus curiae*, suggests that the award of punitive damages would not be appropriate in this case (br. p. 35, n. 16). Since the issue of damages is central to Freeman's obtaining judicial relief—an injunction being of little value to him because of his departure from the area—petitioners wish to emphasize to the Court their disagreement with the Government's position.

The Government asserts that punitive damages are foreclosed because the acts complained of predated the inter-

pretation of the Civil Rights Act of 1866 announced in *Jones v. Mayer Co.* However, no legal authority is cited by the Government for this proposition—and on the basis of their own research, petitioners submit that there is none. To the contrary, the authorities support an opposite conclusion. Thus the Government seems to say that punitive damages are not warranted, because at the time defendants took action against Freeman and Sullivan, they did not know that their conduct violated the Civil Rights Act of 1866, because *Jones* had not been decided. However the malice, ill will or bad motive underlying an award of punitive damages is a state of mind which is not dependent on the actor's knowledge that his conduct is unlawful. Indeed, he usually acts in the belief that his conduct is lawful. A situation much like the one at bar existed in *Scott v. Donald*, 165 U.S. 58, where an award of punitive damages was approved by this Court based on the seizure by the defendants of contraband liquor under color of a state law which the Court held was unconstitutional. There, as here, at the time of the acts complained of, the defendants did not know that their conduct was unlawful—yet, as was later held, it was, and punitive damages were awarded.

There undoubtedly are many other cases of like nature which would be revealed by more extended research. Reference will only be made at this time to such cases, for example, as *Automobile Workers v. Russell*, 356 U.S. 634; *United Construction Workers v. Laburnum Construction Corp.*, 347 U.S. 656; and *Linn v. Plant Guard Workers*, 383 U.S. 53. In each of these cases, there was good reason to believe that the acts in question constituted unfair labor practices under the National Labor Relations Act and that therefore the National Labor Relations Board would have exclusive jurisdiction to redress any injury incurred. The Board, however, was unable to provide relief of the kind sought in these cases. Accordingly, the defendants would not have known at the time of the commission of their acts that their conduct was actionable in the state courts. This Court not only held that state court jurisdiction ex-

isted in these cases, but it approved awards of punitive damages in each instance.

From the inception of this proceeding, plaintiffs have demonstrated that they are entitled to punitive damages.¹ Their complaints alleged (A. 9-11, 18), and the evidence shows, that the defendants' attitude and conduct in relation to both the Freeman and Sullivan families during the period material herein was characterized by anger, hostility, malice, and vindictiveness, elements warranting punitive damages.² Plaintiffs also presented detailed argument, based on the evidence, in their brief to the trial court (pp. 19-21) concerning their right to punitive damages. This case, therefore, is not like *Jones v. Mayer Co.*, 392 U.S. at 415, n. 14, where the Court indicated that on the basis of the facts alleged in that complaint, the plaintiffs were not entitled to punitive damages. In the case at bar, plaintiffs

¹The Sullivan and Freeman complaints each sought damages of \$15,000. In Virginia, punitive damages are recoverable, even though they are not asked for by name in the complaint, if the complaint alleges a state of facts which, if proved, entitle the plaintiff to them. *Wood v. American National Bank*, 100 Va. 306, 40 S.E. 931, 932; *Richmond Passenger & Power Co. v. Robinson*, 100 Va. 394, 41 S.E. 719, 720.

²See generally, McCormick *Law of Damages* (1935). In addition to the cases cited in plaintiffs' main brief (pp. 53-54), see *Greenberg v. Western Turf Ass'n*, 140 Cal. 357, 73 P. 1050, 1051-1052, aff'd 148 Cal. 126, 82 P. 684, aff'd 204 U.S. 359.

meet both the legal and factual criteria for punitive damages and the Government's suggestion to the contrary is without merit.

Respectfully submitted,

Allison W. Brown, Jr.
Suite 501
1424 16th Street, N.W.
Washington, D.C. 20036

Peter Ames Eveleth
217 Fifth Street, S.E.
Washington, D.C. 20003

Robert M. Alexander
2011 S. Glebe Road
Arlington Virginia 22204
Attorneys for Petitioners

Jack Greenberg
James M. Nabrit, III
10 Columbus Circle
New York, New York 10019

Of Counsel

October 1969

FILE COPY

IN THE

Supreme Court of the United States

October Term, 1968

No. ~~999~~ 33

PAUL E. SULLIVAN, et al.,

v.

LITTLE HUNTING PARK, INC., et al.,

T. R. FREEMAN, Jr., et al.,

v.

LITTLE HUNTING PARK, INC., et al.,

Respondents.

**MOTION BY THE ANTI-DEFAMATION LEAGUE
OF B'NAI B'RITH, THE NATIONAL COMMITTEE
AGAINST DISCRIMINATION IN HOUSING, THE
AMERICAN CIVIL LIBERTIES UNION AND THE
AMERICAN JEWISH COMMITTEE FOR LEAVE
TO FILE A JOINT BRIEF AS AMICI CURIAE**

ARNOLD FORSTER

Attorney for

Anti-Defamation League of B'nai B'rith

315 Lexington Avenue

New York, New York 10016

SOL RABKIN

Attorney for

The National Committee Against

Discrimination in Housing, Inc.

1865 Broadway

New York, New York 10023

MELVIN L. WULF

Attorney for

American Civil Liberties Union

156 Fifth Avenue

New York, New York 10010

EDWIN J. LUKAS

SAMUEL RABINOVE

Attorneys for

The American Jewish Committee

165 East 56th Street

New York, New York 10022

FILED

JUN 14 1969

JOHN F. DAVIS, CLERK

Petitioners,

Office Supreme Court

FILED

Respondents OCT 13

JOHN F. DAVIS, Clerk
Petitioners,

To:

ALLISON W. BROWN, JR.
Suite 501
1424-16th Street N.W.
Washington, D. C. 20036

PETER AMES EVELETH
217 Fifth Street E.
Washington, D. C. 20003

ROBERT M. ALEXANDER
2011 S. Glebe Road
Arlington, Virginia 22204

Attorneys for Petitioners

JOHN CHARLES HARRIS
1500 Belle View Blvd.
Alexandria, Virginia 22307

Attorney for Respondent

IN THE
Supreme Court of the United States
October Term, 1968

No. 929

PAUL E. SULLIVAN, *et al.*,
Petitioners,
v.

LITTLE HUNTING PARK, INC., *et al.*,
Respondents.

T. R. FREEMAN, JR., *et al.*,
Petitioners,
v.

LITTLE HUNTING PARK, INC., *et al.*,
Respondents.

**MOTION BY THE ANTI-DEFAMATION LEAGUE
OF B'NAI B'RITH, THE NATIONAL COMMITTEE
AGAINST DISCRIMINATION IN HOUSING, THE
AMERICAN CIVIL LIBERTIES UNION AND THE
AMERICAN JEWISH COMMITTEE FOR LEAVE
TO FILE A JOINT BRIEF AS *AMICI CURIAE***

The undersigned, as counsel for the Anti-Defamation League of B'nai B'rith, the National Committee Against Discrimination in Housing, Inc., the American Civil Liber-

ties Union and the American Jewish Committee move this Court for leave to file a joint brief as *amici curiae* in both above entitled cases.

B'nai B'rith, founded in 1843, is the oldest civic service organization of American Jews, which represents a membership of more than 500,000 men, women and their families. The Anti-Defamation League was organized in 1913 as a section of the parent organization to advance goodwill and proper understanding among Americans and translate into greater effectiveness the ideals of American democracy. It is, therefore, dedicated to combating all aspects of religious and racial discrimination.

The American Jewish Committee, founded in 1906, was incorporated by Act of the Legislature of the State of New York in 1911. Its objective is to advance the civil and religious rights of persons of Jewish faith within the framework of the American ideal of granting equal opportunities to everybody regardless of race, color or creed.

It has been among the fundamental tenets of these organizations that the welfare and the security of members of a racial and religious minority in the United States depend upon the preservation of constitutional guarantees for all, and that an invasion of the rights of any minority group is ultimately a threat to the rights of all groups and of the individual members thereof.

The National Committee Against Discrimination in Housing, Inc. established in 1950 and incorporated in 1969 as a non-profit organization, is dedicated to the elimination

of racial and religious discrimination and segregation in the sale and rental of housing, and to assuring that all persons enjoy equal opportunity in housing throughout the United States.

The American Civil Liberties Union, a national non-profit organization established in 1920, is committed to the inseparable purposes of preserving the democratic principles for which our government was established and to maintain endowed civil liberties. Together with all Americans who prize the blessings of United States citizenship and the privileges of freedom which it brings, the organization seeks to guard against the arbitrary deprivation of our birthrights, which include the right to equal opportunity in housing regardless of race or color.

All four organizations are united on the need for insuring that both government and private programs affecting housing do not extend and indurate existing patterns of racial segregation in housing.

The organizations submitting this petition have often appeared before this Court as *amici curiae* in cases involving racial discrimination. Among the cases in which at least two of these organizations appeared are the *School Segregation Cases*, 347 U.S. 483 (1954), *Colorado Commission v. Continental Airlines, Inc.*, 372 U.S. 714 (1963) and *Jones v. Alfred H. Mayer Company*, 392 U.S. 409 (1968). The last mentioned case dealt specifically with the problem of racial discrimination in housing.

The cases at bar place in issue the legality of a scheme the purpose and effect of which is to prevent members of the

Negro race from renting housing in a suburban area. As the facts show, a corporation which owns the recreation facilities in a certain suburban area permits the use of those facilities only to home owners in the community who are holders of stock of the corporation. As the facts further show, the corporation requires its consent for the transfer of a share of stock to a new land owner or lessee, and such consent has been refused in the case at bar because of the transferee being of the Negro race. In addition, the corporation has cancelled the share of stock of the white owner who has sought to transfer one of his shares to the Negro to whom he had leased a house he owned in the community. The effect of this practice is to prevent a Negro leasing a home in this area from making full use of the facilities and services which are an incident of the property he is leasing, and to make it difficult for white home owners to sell or lease their property to a Negro.

Thus, this practice of the respondents, if permitted to stand, would serve to perpetuate the pattern of black ghettos in our central cities surrounded by a ring of lily-white suburbs, a pattern which is pregnant with danger of racial strife and explosions of violence and hatred.

Two of the organizations in whose behalf this petition is being submitted devoted their brief *amicus curiae* in *Jones v. Mayer* to establishing the proposition that the prohibition of racial discrimination in property transactions contained in the Federal Civil Rights Act of 1866 is a valid provision, enforceable not only against state and state agencies but also against private individuals. In this

connection that brief dealt extensively with the legislative history of the 1866 Act which, in the view of the *amici*, fully supported that proposition, which subsequently was also adopted by this Court in its decision in *Jones v. Mayer*.

In the present case, other language of the 1866 Act, that involving discrimination in personal property transactions (42 U.S.C. 1982) and discrimination in the making and enforcing of contracts (42 U.S.C. 1981) is also in issue. The *amici* believe that in view of the extensive legal and other research they did in connection with their brief in the *Jones v. Mayer* case, they can now make a valuable contribution towards establishing the true meaning and impact of those other clauses of the 1866 Civil Rights Act which survive in Sections 1981 and 1982 of Title 42 of the United States Code, in the light of the legislative history of the act.

The attorneys for the petitioners have consented to our submitting a joint brief *amici curiae* in both related cases. This motion is necessary because the attorney for the respondents has advised us that he is not prepared to consent to the filing of the brief by our organizations because it is hard for him to believe "that the organizations mentioned * * * would file a non-partisan brief."

In reply, it is pointed out that it is not our purpose to submit a partisan brief but one which will deal with the pertinent issues in an objective manner, using as authority previous rulings by this Court, including its decision in *Jones v. Alfred H. Mayer*.

Because of our effort to comply with the practice of filing briefs *amicus* at not later than the date of required filing of the party's brief we are attaching our brief *amicus* hereto.

Respectfully submitted,

ARNOLD FORSTER
Attorney for
Anti-Defamation League of B'nai B'rith
 315 Lexington Avenue
 New York, New York 10016

SOL RABKIN
Attorney for
The National Committee Against
Discrimination in Housing, Inc.
 1865 Broadway
 New York, New York 10023

MELVIN L. WULF
Attorney for
American Civil Liberties Union
 156 Fifth Avenue
 New York, New York 10010

EDWIN J. LUKAS
 SAMUEL RABINOVE
Attorneys for
The American Jewish Committee
 165 East 56th Street
 New York, New York 10022

June 13, 1969

SUPREME COURT OF THE UNITED STATES

No. 33.—OCTOBER TERM, 1969

Paul E. Sullivan, et al., Petitioners, v. Little Hunting Park, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Appeals of Virginia.
---	---	--

[December 15, 1969]

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

These cases, which involve an alleged discrimination against a Negro family in the use of certain community facilities, have been here before. The Virginia trial court dismissed the complaints and the Supreme Court of Appeals of Virginia denied the appeals saying that they were not perfected "in the manner provided by law in that opposing counsel was not given reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or true copy of it" under that court's Rule 5:1, § 3 (f).¹

¹ Rule 5:1 which is entitled "The Record on Appeal" states the following in § 3 (f):

"Such a transcript or statement not signed by counsel for all parties becomes part of the record when delivered to the clerk, if it is tendered to the judge within 60 days and signed at the end by him within 70 days after final judgment. It shall be forthwith delivered to the clerk who shall certify on it the date he receives it. Counsel tendering the transcript or statement shall give opposing counsel reasonable written notice of the time and place of tendering it and a reasonable opportunity to examine the original or a true copy of it. The signature of the judge, without more, will be deemed to be his certification that counsel had the required notice and opportunity, and that the transcript or statement is authentic. He shall note on it the date it was tendered to him and the date it was signed by him."

2 SULLIVAN v. LITTLE HUNTING PARK

The cases came here and we granted the petition for certiorari and vacated the judgments and remanded the cases to the Supreme Court of Appeals for further consideration in light of *Jones v. Alfred H. Mayer Co.*, 392 U. S. 409, 657. On the remand, the Supreme Court of Appeals restated its prior position stating, "We had no jurisdiction in the cases when they were here before, and we have no jurisdiction now. We adhere to our orders refusing the appeals in these cases." 209 Va. 279, 16 S. E. 2d 588. We brought the cases here the second time on a petition for certiorari. 394 U. S. 942.

I

When the cases were first here respondents opposed the petition, claiming that Rule 5:1, § 3 (f), was not complied with. Petitioners filed a reply brief addressing themselves to that question. Thus the point now tendered was fully exposed when the cases were here before, though we ruled on it *sub silentio*.

In these cases counsel for petitioners on June 9, 1967, gave oral notice to counsel for respondents that he was submitting the transcripts to the trial judge. He wrote counsel for respondents on the same day to the same effect, saying he was submitting the transcripts to the trial judge that day, filing motions to correct them, and asking the trial court to defer signing them for a ten-day period to allow counsel for respondents time to consent to the motions or have them otherwise disposed of by the court. The judge, being absent from his chambers on June 9, ruled that he had not received the transcripts until June 12. The motions to correct came on for a hearing June 16, at which time the judge ruled that he would not act on the motions until counsel for respondents had agreed or disagreed with the changes requested. After examining the transcripts between June 16 and June 19, counsel for respondents told counsel for

petitioners that he had no objections to the corrections or to entry of orders granting the motions to correct. Counsel for respondents then signed the proposed orders which counsel for petitioners had prepared. The proposed orders were submitted to the trial judge on June 20; and on the same day he signed the transcripts, after they had been corrected.

As we read its cases, the Supreme Court of Appeals stated the controlling principle in the following language:

"The requirement that opposing counsel have a reasonable opportunity to examine the transcript sets out the purpose of reasonable notice. If, after receipt of notice, opposing counsel be afforded reasonable opportunity to examine the transcript, and to make objections thereto, if any he has, before it is signed by the trial judge, the object of reasonable notice will have been attained." *Bacigalupo v. Fleming*, 199 Va. 827, 835, 102 S. E. 2d 321, 326.

In that case opposing counsel had seven days to examine the record and make any objections. In the present cases he had three days. But so far as the record shows he did not at the time complain that he was not given that "reasonable opportunity" he needed to examine and correct the transcripts.

Petitioners' counsel does not urge—nor do we suggest—that the Virginia Supreme Court of Appeals has fashioned a novel procedural requirement for the first time in this case; cf. *NAACP v. Alabama*, 357 U. S. 449, 457-458; past decisions of the state court refute any such notion. See *Bacigalupo v. Fleming*, *supra*; *Bolin v. Laderberg*, 207 Va. 795, 153 S. E. 2d 251; *Cook v. Virginia Holsum Bakeries, Inc.*, 207 Va. 815, 153 S. E. 2d 209.² But those same decisions do not enable us

² In *Bolin v. Laderberg*, 207 Va. 795, appellants' counsel had delivered the transcript to appellees' counsel on November 24,

4 SULLIVAN v. LITTLE HUNTING PARK

to say that Virginia has so consistently applied its notice requirement as to amount to a self-denial of the power to entertain the federal claim here presented if the Supreme Court of Appeals desires to do so. See *Henry v. Mississippi*, 379 U. S. 443, 455-457 (BLACK, J., dissenting). Such a rule, more properly deemed discretionary than jurisdictional, does not bar review here by certiorari.

1965. The transcript was tendered to the trial judge on November 26, and was signed by him on December 3. Appellees moved to dismiss the appeal on the ground that they had not been given "reasonable notice and opportunity" under Rule 5:1. The court stated that the motion should be overruled on the ground that Rule 5:1 provides that "the signature of the judge, without more, will be deemed to be his certification that counsel had the required notice and opportunity, and that the transcript . . . is authentic." The court noted that the judge's "signature appears on the transcript without more and is, therefore, his certification that counsel for appellees had the required notice of tendering the transcript and the required opportunity to examine it." *Id.*, at 797.

In *Cook v. Virginia Holsum Bakeries, Inc.*, 207 Va. 815, notice that the transcript would be tendered to the trial judge on October 20, 1965, was given to counsel for the appellee on October 15. Appellant's counsel, however, did not obtain a copy of the transcript until October 19. At a conference held on that same date, counsel for both parties went over the transcript and agreed on certain corrections and additions. At the hearing on October 20, appellee's counsel claimed he had not been given the reasonable notice and opportunity required by Rule 5:1. He then suggested numerous changes, and the trial judge ordered the transcript altered to reflect those changes. The revised transcript was tendered to the trial judge the next day, October 21, and signed by him that same day. On appeal, appellee moved to dismiss on the ground that the Rule 5:1 requirements had not been satisfied. The Virginia Supreme Court of Appeals overruled the motion, stating: "The narrative was amended to meet the suggested changes of counsel for [appellee], and he conceded in oral argument before us that the statement signed by the trial judge was correct." *Id.*, at 817.

II

Little Hunting Park, Inc., is a Virginia nonstock corporation organized to operate a community park and playground facilities for the benefit of residents in an area of Fairfax County, Virginia. A membership share entitles all persons in the immediate family of the shareholder to use the corporation's recreation facilities. Under the bylaws a person owning a membership share is entitled when he rents his home to assign the share to his tenant, subject to approval of the board of directors. Paul E. Sullivan and his family owned a house in this area and lived in it. Later he bought another house in the area and leased the first one to T. R. Freeman, Jr., an employee of the U. S. Department of Agriculture; and assigned his membership share to Freeman. The board refused to approve the assignment because Freeman was a Negro. Sullivan protested that action and was notified that he would be expelled from the corporation by the board. A hearing was accorded him and he was expelled, the board tendering him cash for his two shares.

Sullivan and Freeman sued under 42 U. S. C. §§ 1981, 1982 for injunctions and monetary damages. Since Freeman no longer resides in the area served by Little Hunting Park, Inc., his claim is limited solely to damages.

The trial court denied relief to each petitioner. We reverse those judgments.

In *Jones v. Mayer Co.*, 392 U. S. 409, we reviewed at length the legislative history of 42 U. S. C. § 1982.³ We

³ 42 U. S. C. § 1982 provides:

"All citizens of the United States shall have the same right in every State and Territory, as is enjoyed by white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property."

6 SULLIVAN v. LITTLE HUNTING PARK

concluded that it reaches beyond state action and operates upon the unofficial acts of private individuals and that it is authorized by the Enabling Clause of the Thirteenth Amendment. We said:

“Negro citizens, North and South, who saw in the Thirteenth Amendment a promise of freedom—freedom to ‘go and come at pleasure’ and to ‘buy and sell when they please’—would be left with ‘a mere paper guarantee’ if Congress were powerless to assure that a dollar in the hands of a Negro will purchase the same thing as a dollar in the hands of a white man. At the very least, the freedom that Congress is empowered to secure under the Thirteenth Amendment includes the freedom to buy whatever a white man can buy, the right to live wherever a white man can live. If Congress cannot say that being a free man means at least this much, then the Thirteenth Amendment made a promise the Nation cannot keep.” 392 U. S., at 443.

The Virginia trial court rested on its conclusion that Little Hunting Park was a private social club. But we find nothing of the kind on this record. There was no plan or purpose of exclusiveness. It is open to every white person within the geographic area, there being no selective element other than race. See *Daniel v. Paul*, 395 U. S. 298, 301–302. What we have here is a device functionally comparable to a racially restrictive covenant, the judicial enforcement of which was struck down in *Shelley v. Kraemer*, 334 U. S. 1, by reason of the Fourteenth Amendment.

In *Jones v. Mayer Co.*, the complaint charged a refusal to sell petitioner a home because he was black. In the instant cases the interest conveyed was a leasehold

of reality coupled with a membership share in a nonprofit company organized to offer recreational facilities to owners and lessees of real property in that residential area. It is not material whether the membership share be considered realty or personal property, as § 1982 covers both. Section 1982 covers the right "to inherit, purchase, lease, sell, hold and convey real and personal property." There is a suggestion that transfer on the books of the corporation of Freeman's share is not covered by any of those verbs. The suggestion is without merit. There has never been any doubt but that Freeman paid part of his \$129 monthly rental for the assignment of the membership share in Little Hunting Park. The transaction clearly fell within the "lease." The right to "lease" is protected by § 1982 against the actions of third parties, as well as against the actions of the immediate lessor. Respondent's actions in refusing to approve the assignment of the membership share in this case was clearly an interference with Freeman's right to "lease." A narrow construction of the language of § 1982 would be quite inconsistent with the broad and sweeping nature of the protection meant to be afforded by § 1 of the Civil Rights Act of 1866, from which § 1982 was derived. See 392 U. S., at 422-437.

We turn to Sullivan's expulsion for the advocacy of Freeman's cause. If that sanction, backed by a state court judgment, can be imposed, then Sullivan is punished for trying to vindicate the rights of minorities protected by § 1982. Such a sanction would give impetus to the perpetuation of racial restrictions on property. That is why we said in *Barrows v. Jackson*, 346 U. S. 249, 259, that the white owner is at times "the only effective adversary" of the unlawful restrictive covenant. Under the terms of our decision in *Barrows*,

8 SULLIVAN v. LITTLE HUNTING PARK

there can be no question but that Sullivan has standing to maintain this action.

We noted in *Jones v. Mayer Co.*, that the Fair Housing Act of 1968, 82 Stat. 81, in no way impaired the sanction of § 1982. 392 U. S., at 413-417. What we said there is adequate to dispose of the suggestion that the Public Accommodations provision of the Civil Rights Act of 1964, 78 Stat. 243, in some way supersedes the provisions of the 1866 Act. For the hierarchy of administrative machinery provided by the 1964 Act is not at war with survival of the principles embodied in § 1982. There is, moreover, a saving clause in the 1964 Act as respects "any right based on any other Federal . . . law not inconsistent" with that Act.⁴

Section 1982 of the 1866 Act is plainly "not inconsistent" with the 1964 Act, which has been construed as not "pre-empting every other mode of protecting a federal 'right' or as granting immunity" to those who had long been subject to federal law. *United States v. Johnson*, 390 U. S. 563, 566.

We held in *Jones v. Mayer Co.* that although § 1982 is couched in declaratory terms and provides no explicit method of enforcement, a federal court has power to fashion an effective equitable remedy. 392 U. S., at 414, n. 13. That federal remedy for the protection of

⁴ Section 207 (b) of the Act of July 2, 1964, 78 Stat. 246, provides:

"The remedies provided in this title shall be the exclusive means of enforcing the rights based on this title, but nothing in this title shall preclude any individual or any State or local agency from asserting any right based on any other Federal or State law not inconsistent with this title, including any statute or ordinance requiring nondiscrimination in public establishments or accommodations, or from pursuing any remedy, civil or criminal, which may be available for the vindication or enforcement of such right."

a federal right is available in the state court, if that court is empowered to grant injunctive relief generally, as is the Virginia court. Va. Code Ann. § 8-610 (1957).

Finally as to damages. Congress, by 28 U. S. C. § 1343 (4), created federal jurisdiction for "damages or . . . equitable or other relief under any Act of Congress providing for the protection of civil rights" We reserved in *Jones v. Mayer Co.*, 392 U. S., at 414-415, n. 14, the question of what damages, if any, might be appropriately recovered for a violation of § 1982.

We had a like problem in *Bell v. Hood*, 327 U. S. 678, where suit was brought against federal officers for alleged violations of the Fourth and Fifth Amendments. The federal statute did not in terms at least provide any remedy. We said:

" . . . where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." *Id.*, at 684.

The existence of a statutory right implies the existence of all necessary and appropriate remedies. See *Texas & N. O. R. Co. v. Ry. Clerks*, 281 U. S. 548, 569-570. As stated in *Texas & P. Ry. v. Rigsby*, 241 U. S. 33, 39:

"A disregard of the command of the statute is a wrongful act, and where it results in damage to one of the class for whose especial benefit the statute was enacted, the right to recover the damages from the party in default is implied"

10 SULLIVAN v. LITTLE HUNTING PARK

Compensatory damages for deprivation of a federal right are governed by federal standards, as provided by Congress in 42 U. S. C. § 1988, which states:

"The jurisdiction in civil . . . matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution and laws of the United States, shall be extended to and govern the said courts in the trial and disposition of the cause"

This means, as we read § 1988, that both federal and state rules on damages may be utilized, whichever better serves the policies expressed in the federal statutes. Cf. *Brazier v. Cherry*, 293 F. 2d 401. The rule of damages, whether drawn from federal or state sources, is a federal rule responsive to the need whenever a federal right is impaired. We do not explore the problem further, as the issue of damages was not litigated below.

It is suggested, not by any party but by the dissent, that any relief should await proceedings under the Fair Housing Act of 1968. 82 Stat. 81, 42 U. S. C. (Supp. IV) § 3601 *et seq.* But these suits were commenced on March 16, 1966, two years before that Act was passed.

SULLIVAN v. LITTLE HUNTING PARK 11

It would be irresponsible judicial administration to dismiss a suit because of an intervening Act ⁵ which has no possible application to events long preceding its enactment.

Reversed.

⁵ The Act is not fully effective until December 31, 1969. 42 U. S. C. § 3603 (b). Even at that time it will not apply to a "single-family house" if the house is sold without the services of a real estate broker and without the notice described in § 3604 (c). See § 3603 (b). So no one knows whether the new Act would apply to these ancient transactions, even if they arose after December 31, 1969.

SUPREME COURT OF THE UNITED STATES

No. 33.—OCTOBER TERM, 1969

Paul E. Sullivan et al., Petitioners, v. Little Hunting Park, Inc., et al.	}	On Writ of Certiorari to the Supreme Court of Appeals of Virginia.
--	---	--

[December 15, 1969]

MR. JUSTICE HARLAN, with whom THE CHIEF JUSTICE and MR. JUSTICE WHITE join, dissenting.

In *Jones v. Mayer*, 392 U. S. 409 (1968), the Court decided that a little-used section of a 100-year-old statute prohibited private racial discrimination in the sale of real property. This construction of a very old statute, in no way required by its language,¹ and open to serious question in light of the statute's legislative history,² seemed to me unnecessary and unwise because of the recently passed, but then not yet fully effective Fair Housing Law passed in 1968.³ Today, the Court goes yet beyond *Jones* (1) by implying a private right to damages for violations of § 1982; (2) by interpreting § 1982 to prohibit a community recreation association from withholding, on the basis of race, approval of an assignment of a membership that was transferred incident to a lease of real property; and (3) by deciding that a white person who is expelled from a recreation association "for the advocacy of [a Negro's] cause" has "standing" to maintain an action for relief under § 1982.

¹ 392 U. S., at 452-454.

² 392 U. S., at 454-473. See Casper, *Jones v. Mayer*: Clio Bemused and Confused, 1968 Supreme Court Review 89, 99-122; Note, The Supreme Court, 1967 Term, 82 Harv. L. Rev. 63, 93-103 (1968).

³ Civil Rights Act of 1968, Tit. VIII, 42 U. S. C. § 3601 *et seq.* (Supp. IV 1969).

2 SULLIVAN v. LITTLE HUNTING PARK

Because the Fair Housing Law will become fully effective less than three weeks from now,⁴ I think the majority even more unwise than it was in *Jones*, in precipitously breathing still more life into § 1982, which is both vague and open-ended, when Congress has provided this modern statute, containing various detailed remedial provisions aimed at eliminating racial discrimination in housing. For this reason, which I elaborate in Part II, I would dismiss the writ in this case as improvidently granted. To provide examples of some of the difficulties the Court will inevitably encounter if it continues to employ § 1982 in these sorts of cases, I examine in Part III the undiscriminating manner in which the majority deals with, and for the most part ignores, the complexities involved in (1) giving Sullivan relief and (2) engrafting a damage remedy onto § 1982 in a case arising from a state court. But, first, I consider the threshold question of whether there is present in this case an adequate state ground which would bar review by this Court.

I

ADEQUACY OF THE STATE GROUND

The Virginia Supreme Court of Appeals, both before and after this Court's earlier remand, refused to consider the federal questions presented to it because it found that petitioners had failed to give opposing counsel "reasonable written notice of the time and place of tendering the transcript and a reasonable opportunity to examine the original or true copy of it," in violation of Rule 5:1, § 3 (f) of the local rules of court.⁵ The majority here suggests that the State's procedural require-

⁴ The third and final stage in the expansion of the coverage of the Fair Housing Law takes effect after December 31, 1969. See 42 U. S. C. § 3603 (b) (Supp. IV, 1969).

⁵ See n. 1 of the majority opinion, *ante*, for the text of the Rule.

ment, though not a "novel" one "fashioned . . . for the first time in this case," nevertheless had not been "so consistently applied . . . as to amount to a self-denial of the power to entertain the federal claim." The majority then goes on to conclude that because the State's procedural rule is "more properly deemed discretionary than jurisdictional," review should not be barred here. I agree with the majority's conclusion that there is no adequate state ground shown, but I find myself unable to subscribe to the majority's reasoning which appears to me unclear and confusing.

I am not certain what the majority means in its apparent distinction between rules which it deems "discretionary" and those which it deems "jurisdictional." Perhaps the majority wishes to suggest that the dismissals of petitioners' writs of error by the Supreme Court of Appeals were simply *ad hoc* discretionary refusals to accept plenary review of the lower court's decisions, analogous to this Court's denial of certiorari. If this were all the Virginia Supreme Court of Appeals had done, review of a federal question properly raised below would of course not be barred here. The mere discretionary refusal of the highest state court to grant review of a lower court decision does not provide an adequate state ground. In such circumstances, the decision of the lower court, rather than the order of the highest court refusing review, becomes the judgment of the "highest court of a State in which a decision could be had" for purposes of 28 U. S. C. § 1257, our jurisdictional statute.⁶

But this case clearly does not present this kind of discretionary refusal of a state appellate court to accept review. Although the Virginia Supreme Court of Ap-

⁶ See, e. g., *Michigan-Wisconsin Pipe Line Co. v. Culvert*, 347 U. S. 157, 159-160 (1954).

4 SULLIVAN v. LITTLE HUNTING PARK

peals may well have the "discretion" to refuse review⁷ in a particular case without giving reasons or reconciling its refusal with earlier decisions, the dismissal below was not simply an *ad hoc* exercise of the power not to review every case presented. Instead the state court dismissed the petitions for review for a stated reason, namely, a lack of "jurisdiction to entertain the appeals because of the failure of counsel for the Sullivans and the Freemans to meet the requirements of Rule 5:1, § 3 (f)." When a state appellate court's refusal to consider the merits of a case is based on the failure to conform to a state rule of practice, review by this Court is barred unless this Court is able to find that application of the state rule of practice to the case at hand does not constitute an adequate state ground. This is so quite irrespective of whether the state appellate court had the power to refuse review for no reason at all.⁸

The majority might have another meaning in mind when it describes the State's procedural rule as "discretionary." It may be suggesting that "reasonable written notice," and "reasonable opportunity to examine" are such flexible standards that the Virginia Supreme Court of Appeals has the "discretion" to decide a close case either of two ways without creating an obvious conflict with earlier decisions. If this is what the majority means by "discretionary rule," then I must register my disagreement. This kind of "discretion" is nothing more than "the judicial formulation of law," for a court has an obligation to be reasonably consistent and "to explain the decision, including the reason for according different

⁷ It appears that plenary review by the Virginia Supreme Court of Appeals is not a matter of right for many kinds of cases. See Va. Code Ann. § 8-462 (Repl. Vol. 1957); Va. Const., §§ 87, 88.

⁸ See *Hammerstein v. Superior Court*, 341 U. S. 491, 492 (1951); *Chesapeake & Ohio Ry. Co. v. McDonald*, 214 U. S. 191 (1909); *Newman v. Gates*, 204 U. S. 89 (1907).

treatment to the instant case.”⁹ Surely a state ground is no less adequate simply because it involves a standard which requires a judgment of what is reasonable, and because the result may turn on a close analysis of the facts of a particular case in light of competing policy considerations.

Although the majority's loose use of the word “discretionary” may suggest that any decision made pursuant to a broad standard cannot provide an adequate state ground, I think examination of the earlier opinions of the Virginia Supreme Court of Appeals, several of which are cited by the majority, provides the proper foundation for the result reached by the majority, under the principle of *N.A.A.C.P. v. Alabama*, 357 U. S. 449 (1958).

The finding of the Virginia Supreme Court of Appeals of a violation of Rule 5:1, § 3 (f), in this case was in my view based on a standard of reasonableness much stricter than that which could have been fairly extracted from the earlier Virginia cases applying the rule¹⁰ and its predecessor statute.¹¹ In other words, although Rule

⁹ Sandalow, *Henry v. Mississippi and the Adequate State Ground: Proposals for a Revised Doctrine*, 1965 Supreme Court Review 187, 226. See *id.*, at 225-226 for a discussion of MR. JUSTICE BLACK's dissent in *Henry v. Mississippi*, 379 U. S. 443, 455-457 (1965), which is cited by the majority. *Williams v. Georgia*, 349 U. S. 375 (1955), which is not cited by the majority, does not in my view support the reasoning of the majority. I think the result in *Williams* rests upon a determination of inconsistency in the application of the State's procedural requirements for a new trial. See 349 U. S., at 383.

¹⁰ *Bolin v. Laderberg*, 207 Va. 795 (1967); *Cook v. Virginia Holsum Bakeries*, 207 Va. 815 (1967); *Taylor v. Wood*, 201 Va. 615 (1960); *Bacigalupo v. Fleming*, 199 Va. 827 (1958).

¹¹ *Stokely v. Owens*, 189 Va. 248 (1949); *Grimes v. Crouch*, 175 Va. 126 (1940).

6 SULLIVAN v. LITTLE HUNTING PARK

5:1, § 3 (f), itself may not be novel, the standard implicitly governing the Rule's application to the facts here was. I think it fair to conclude that in light of these earlier decisions, and the principle set forth in *Bacigalupo v. Fleming*, 199 Va. 827, 835 (1958),¹² the petitioners here might have justifiably thought that review in the Supreme Court of Appeals would not be barred by the Rule, notwithstanding *Snead v. Commonwealth*, 200 Va. 850 (1959), the one case cited below by the Virginia court, relied on here by respondent and yet somehow ignored by the majority.¹³ Because "[n]ovelty in

¹² It can be seen from the passage quoted by the majority, see *supra*, at —, that *Bacigalupo* interpreted the Rule as requiring that (1) opposing counsel must have a reasonable opportunity to examine the transcript *after* he receives notice; and (2) based on this examination, opposing counsel must have a reasonable opportunity to make any objections he has to the accuracy of the transcript *before* the transcript is signed by the trial judge. In this case, opposing counsel received notice by telephone on Friday, June 9, and by letter the following Monday. His opportunity to examine the transcript consisted of the time between Monday and Friday when the transcript was available to him in the judge's chambers; and the time between Friday, June 16, and Monday, the 19th, when he actually had in his possession a copy of the transcript. Any argument that this length of time, *per se*, is not reasonable opportunity is belied by *Cook v. Holsum Bakeries*, *supra*, where opposing counsel received a copy of a narrative only two days before the trial judge signed it, and the Virginia Supreme Court of Appeals found no violation of the Rule.

¹³ In *Snead*, the Virginia Supreme Court of Appeals said: "It is important that time be given opposing counsel for a reasonable opportunity to analyse such statements characterized by defendant's counsel as being confusing. The entire testimony of a very material witness was left out of the narrative statement when it was presented to the trial judge and it was necessary for him to insert it. We are of the opinion that the notice delivered to the Commonwealth's Attorney at his residence, after office hours, thirty minutes before tendering a narrative statement of the evidence to the trial judge for his signature, does not constitute reasonable notice

procedural requirements cannot be permitted to thwart review in this Court applied for by those who, in justified reliance upon prior decisions, seek vindication in state courts of their federal . . . rights," *N.A.A.C.P. v. Alabama*, 357 U. S., at 457-458. I conclude that the decision below does not rest on an adequate state ground.

II

Because Congress has now provided a comprehensive scheme for dealing with the kinds of discrimination found in this case, I think it very unwise as a matter of policy for the Court to use § 1982 as a broad delega-

within the plain meaning of Rule 5:1, § 3 (f) and that the terms of the rule are mandatory and jurisdictional." 200 Va., at 854.

This case is far different from *Snead* in significant respects. First, in *Snead* the court was not confronted with a transcript but instead with a narrative; and, this narrative was, by the admission of appellant's own counsel, "of a confusing nature and character." In this case on the other hand, the record fails to show that counsel for respondent made any objection to the trial judge as to the adequacy of the notice, or to the accuracy of the transcript, see *Taylor v. Wood*, *supra*; *Stokely v. Owens*, *supra*. Furthermore, at oral argument before this Court, counsel for respondent could not point to a single inaccuracy in the transcript as signed by the trial judge. Tr. of Oral Arg., at 20. Second, in *Snead* opposing counsel was only given one-half hour's notice of a proposed tender to the judge *for signature that night*. In this case, although the transcript was sent to the judge at about the same time as opposing counsel received notice, that notice stated that the judge would not be asked to sign the transcript for a week, so counsel could first have an opportunity to examine it.

Respondent suggests that the Rule requires that opposing counsel have notice and an opportunity to examine the transcript before the transcript is given to the judge rather than simply before the judge signs it. No prior Virginia case of which we have been made aware has so stated, however, and the principle of *Bacigalupo* quoted by the majority suggests that the key is that there be an opportunity to inspect and to make objections *before* the judge signs the transcript.

8 SULLIVAN v. LITTLE HUNTING PARK

tion of power to develop a common law of forbidden racial discriminations. A comparison of 42 U. S. C. § 1982 with the new Fair Housing Law, and consideration of the Court's task in applying each, demonstrates to me the need for restraint, and the appropriateness of dismissing the writ in this case, now grounded solely on an alleged violation of § 1982.

Petitioners here complain of discrimination in the provision of recreation facilities ancillary to a rented house found in one of the four subdivisions served by Little Hunting Park. On the one hand, the Fair Housing Law has a provision that explicitly makes it unlawful to "discriminate against any person in the terms, conditions, or privileges of . . . rental [of housing], or in the provision of services or facilities in connection therewith because of race, [or] color" 42 U. S. C. § 3604 (b) (Supp. IV 1969). (Emphasis added.) In contrast, as the majority in *Jones* noted, § 1982 "does not deal specifically with discrimination in the provision of services or facilities in connection with the sale or rental of a dwelling," 392 U. S., at 413-414.

By attempting to deal with the problem of discrimination in the provision of recreational facilities under § 1982, the Court is forced, in the context of a very vague statute, to decide what transactions involve "property" for purposes of § 1982. The majority states that "[i]t is not material whether the membership share [in Little Hunting Park] be considered realty or personal property, as § 1982 covers both." But examination of the opinion will show that the majority has failed to explain why the membership share is *either* real or personal property for purposes of § 1982. The majority's complete failure to articulate any standards for deciding what is property for § 1982 is a fair indication of the great difficulties courts will inevitably confront

if § 1982 is used to remedy racial discrimination in housing. And lurking in the background are grave constitutional issues should § 1982 be extended too far into some types of private discrimination.¹⁴

Not only does § 1982 fail to provide standards as to the types of transactions in which discrimination is unlawful, but it also contains no provisions for enforcement, either public or private. To give its construction of the statute effect, the Court has had to imply remedies which Congress has not explicitly provided—injunctive relief in *Jones*, and now a right to damages here. See Part III, *infra*.

These remedies are expressly provided for in the Fair Housing Law, which, with its variety of techniques for enforcing its prohibition of housing discrimination, again stands in sharp contrast with § 1982. First, an injured party can complain to the Secretary of Housing and Urban Development who is empowered to investigate complaints, and use "informal methods of conference, conciliation, and persuasion" to secure compliance with the law.¹⁵ Should the Secretary's efforts prove unavailing, the complainant can go to court.¹⁶ As an alternative to going first to HUD, it appears that a person may go directly to court to enforce his rights under the Fair Housing Law,¹⁷ which expressly provides for a wide variety of relief, including restraining orders, injunctions, compensatory damages, and puni-

¹⁴ See *Civil Rights Cases*, 109 U. S. 3 (1883).

¹⁵ 42 U. S. C. § 3610 (a) (Supp. IV, 1969).

¹⁶ *Id.*, § 3610 (d).

¹⁷ *Id.*, § 3612. See Fair Housing 1968—An Interpretation of Title VIII of the Civil Rights Act of 1968, U. S. Dept. of Housing & Urban Development; Note, Discrimination in Employment and in Housing: Private Enforcement Provisions of the Civil Rights Acts of 1964 and 1968, 82 Harv. L. Rev. 834, 839, 855-859, 862-863 (1969).

10 SULLIVAN v. LITTLE HUNTING PARK

tive damages up to \$1,000.¹⁸ Furthermore, the Act allows a court to appoint counsel and waive all fees for indigent plaintiffs, and to award costs and, in certain cases, counsel fees to a successful plaintiff.¹⁹ In addition to actions initiated by private parties, the Attorney General is empowered to bring civil actions for preventive civil relief, and criminal actions to punish those who by force or threat of force willfully interfere with or intimidate those who wish to exercise, or aid others in the exercise, of their rights under the Fair Housing Law.²⁰

Given this comprehensive, contemporary statute, the limitations of which have not yet even been established, I believe that the Court should not decide this case but should instead dismiss the writ of certiorari as improvidently granted.²¹ This Court's certiorari jurisdiction should not be exercised simply "for the benefit of the particular litigants," *Rice v. Sioux City Cemetery*, 349 U. S. 70, 74 (1955), but instead for the "settlement of [issues] of importance to the public as distinguished from . . . the parties," *Layne & Bowler Corp. v. Western Well Works, Inc.*, 261 U. S. 387, 393 (1923). Even from the perspective of the parties, this case has lost much of its practical importance due to the fact that Dr. Freeman's work has taken him and his family away from the area served by Little Hunting Park, thereby making moot his original claim for injunctive relief.²² But more

¹⁸ 42 U. S. C. § 3612 (c) (Supp. IV, 1969).

¹⁹ *Id.*, §§ 3612 (b), 3612 (c).

²⁰ *Id.*, §§ 3613, 3631. See *id.*, § 3617.

²¹ Cf. Bickel, Forward 1968 Supreme Court Term: The Passive Virtues, 75 Harv. L. Rev. 40 (1961).

²² Given that the market price of a membership share in Little Hunting Park apparently ranged from \$150 to \$230 during the time in question, see Government's Amicus Brief, at 5, Freeman's compensatory damages will not, in all probability, be substantial. And, as I point out in the next section, unresolved factual issues may bar any relief at all for Sullivan.

fundamentally, I think here, as I did in *Jones*, that the existence of the Fair Housing Act renders the decision of this case of little "importance to the public." For, although the 1968 Act does not cover this particular case,²³ should a Negro in the future rent a house but be denied access to ancillary recreational facilities on account of race, he could in all likelihood secure relief under the provisions of the Fair Housing Act.²⁴

III

The undiscriminating manner in which the Court has dealt with this case is both highlighted and compounded by the Court's failure to face, let alone resolve, two issues which lie buried beneath the surface of its opinion. Both issues are difficult ones, and the fact that the majority has not come to grips with them serves to illustrate the inevitable difficulties the Court will encounter if it continues to employ § 1982 as a means for dealing with the many subtle human problems that are bound to arise as the goal of eliminating discriminatory practices in our national life is pursued.

²³ The relevant events in this case all took place in 1965, long before the Fair Housing Law first went into effect on April 11, 1968. Whether the Fair Housing Law would protect Dr. Freeman were like events to take place again after December 31, 1969, in part would depend upon whether the transaction between Sullivan and Freeman would fall within any of the categories described in n. 24, *post*. On the facts as they appear in this record, the exemption found in 42 U. S. C. § 3607 would not appear to bar recovery.

²⁴ In addition to covering all single family houses not owned by private individuals, and single family houses owned by a private individual who owns more than three houses, the Fair Housing Act, after December 31, 1969, covers the rental of all single family homes (a) rented with the help of a real estate broker; or (b) offered for rental through a written notice or advertisement which is discriminatory. See 42 U. S. C. § 3603 (b) (Supp. IV, 1969).

12 SULLIVAN v. LITTLE HUNTING PARK

A. RELIEF FOR SULLIVAN

Because the majority opinion is highly elliptical as to (1) the circumstances surrounding Sullivan's expulsion from Little Hunting Park, (2) the relief Sullivan sought in the state court, and (3) the decision of the trial court, it is necessary for me to begin my analysis simply by stating the facts of these aspects of the case. A full examination of the record reveals, first, the necessity for there to be a remand on the majority's own premises. It also makes apparent the majority's failure to provide any guidance as to the legal standards which should govern Sullivan's right to recovery on remand. An awareness of the complexity of the issues relevant to Sullivan's right to redress suggests further, I think, the appropriateness of a discretionary denial of review.

1. *The Circumstances of Sullivan's Expulsion.* After the Board of Little Hunting Park refused to approve the assignment of a membership share from Sullivan to Freeman, Sullivan attempted to convince the Board to reverse its decision. To this end, Sullivan first met with members of the Board, and protested their actions. He subsequently mobilized a campaign by both other members of the club and by persons in the community as a whole to force the Board to reconsider its decision. The means used in this campaign, as the brief for petitioner Sullivan acknowledges,²⁵ included phone calls to members of the Board, letters to local clergy, and the circulation among the members of Little Hunting Park of a petition that called for a meeting of the full membership to consider Dr. Freeman's case.

On July 8 Sullivan received a letter from the Board which stated that it had determined that there was "due cause" to warrant a hearing in order to determine

²⁵ See Petitioner's Brief 9-11, 39-50.

whether Sullivan should be expelled from Little Hunting Park, pursuant to its bylaws, for "conduct inimicable [sic] to the Corporation members." This letter referred to Sullivan's "non-acceptance of the Board's decision on the assignment of your membership to your tenant . . . along the continued harassment of the board members" as the basis for the Board's "due cause" determination.

The Board subsequently provided a detailed specification of its charges against Sullivan,²⁶ and these included, *inter alia*, allegations that Sullivan had (a) instigated a campaign by which board members were harassed by "unfriendly phone calls" accusing them of bigotry; (b) used "abusive" language in a phone call to the president of the Board; (c) written letters to local clergy, including the minister of the church which employed the president of Little Hunting Park, accusing board members of participation in "real moral evil"; and (d) used "violent and abusive language" to members of Hunting Park who had refused to sign his petition. After the hearing on these charges, the Board expelled Sullivan and tendered to him the current market value of the two membership shares which he held.

In response to these actions, Sullivan brought this suit in the Circuit Court of Fairfax County, Virginia, against Little Hunting Park and its Board seeking as relief (1) an order compelling Little Hunting Park to

²⁶ See Appendix, at 181-182, 185-186. The detailed specification of charges against Sullivan was given by Little Hunting Park as part of a settlement of a suit brought by Sullivan to enjoin the hearing on his expulsion. This earlier suit, which was dismissed by agreement between the parties, was brought by Sullivan because of the vagueness of the July 8 letter as to the conduct upon which the due cause hearing was to be held. The settlement of this earlier suit also included a stipulation between Sullivan and Little Hunting Park as to future law suits, which respondents claimed below barred Sullivan's suit before us now. This aspect of the stipulation was noted, but not passed on by the trial judge below.

14 SULLIVAN v. LITTLE HUNTING PARK

reinstate his membership; (2) monetary damages in the amount of \$15,000; and (3) an injunction requiring the Board to approve the assignment to Freeman and forbidding the Board to use race as a factor in considering membership. The trial court, after hearing disputed evidence as to the reasons for Sullivan's expulsion, found for the defendants. It stated that the scope of its review of the Board's actions was "limited" because Hunting Park was a "private and social" club, and then went on to find that the Board had acted within "the powers conferred on it by the by-laws" in expelling Sullivan, and that "there was ample evidence to justify [the Board's] conclusion that the complainant's acts were inimicable [*sic*] to the Corporation's members and to the Corporation."

2. With this statement of the record in mind, several observations must be made about the majority's treatment of Sullivan's rights. First, in stating that "Sullivan's exclusion [was] for the advocacy of Freeman's cause," the majority surely cannot be taken to have resolved disputed testimony, and decided the facts underlying Sullivan's expulsion. If these facts are relevant to Sullivan's remedial rights, as surely they must be, then a remand for detailed findings seems unavoidable under the majority's own premises.

Second, the majority has not explained what legal standard should determine Sullivan's rights under § 1982. The majority simply states that "Sullivan has standing to maintain this action" under § 1982, without even acknowledging that some standard is essential for this case to be ultimately decided.

One can imagine a variety of standards, each based on different legal conclusions as to the "rights" and "duties" created by § 1982, and each having very different remedial consequences. For example, does § 1982 give Sullivan a right to relief only for injuries resulting

from Little Hunting Park's interference with *his* statutory duty to Freeman under § 1982? If so, what is Sullivan's duty to Freeman under § 1982? Unless § 1982 is read to impose a duty on Sullivan to *protest* Freeman's exclusion, he would be entitled to reinstatement under this standard only if the Board had expelled him for the simple act of assigning his share to Freeman.

As an alternative, Sullivan might be thought to be entitled to relief from those injuries which flowed from the Board's violation of *its* "duty" to Freeman under § 1982. Such a standard might suggest that Sullivan is entitled to damages which resulted from Little Hunting Park's initial refusal to accept the assignment to Freeman but again not to reinstatement. Or does the Court think that § 1982 gives Sullivan a right to relief from injuries which result from his "legitimate" protest aimed at convincing the Board to accept Freeman? If so, what protest activities were legitimate here? Most extreme would be a standard which would give Sullivan relief from injuries which were the result of *any* actions he took to protest the Board's initial refusal, irrespective of Sullivan's means of protest. Only this standard would require reinstatement, irrespective of the disputed facts here. But this standard would mean that § 1982 gave Sullivan a right to regain his membership even if the Board has expelled him for using intemperate and abusive threats as a means of protesting Freeman's exclusion.²⁷

²⁷ *Barrows v. Jackson*, 346 U. S. 249 (1953), upon which the majority appears to place heavy reliance, gives no guidance as to the extent a state court is obliged to allow a white person to recover affirmatively either damages or other relief after he has transferred a real estate interest to a Negro. In *Barrows* the Court held that damages could not be awarded *against* a white defendant sued for breach of a racially restrictive covenant.

16 SULLIVAN v. LITTLE HUNTING PARK

B. STATE COURT REMEDIES FOR FEDERAL RIGHTS

Because this case arises from a state court, it presents special problems which the majority overlooks, and which suggests again the undesirability of deciding this case in the context of this ancient statute. In deciding that there is a right to recover damages in this case, the majority overlooks the complications involved by dint of the fact that a state court is being asked to provide a remedy for a federal right bottomed on a federal statute which itself has no remedial provisions.

Implied remedies for federal rights are sometimes solely a matter of federal law²⁸ and other times dependent, either wholly or partially, upon state law.²⁹ The issues of what remedies a state court must³⁰ or must not³¹ provide in cases involving federal rights is a most difficult and confusing area of the law.³²

It should be noted that the majority's opinion, though perhaps deciding very little³³ only adds to the confusion already existing in this area. Section 1988 of Title 42, which the majority apparently thinks decides this case, is concerned with the remedial powers of *federal district*

²⁸ See *J. I. Case Co. v. Borak*, 377 U. S. 426 (1964).

²⁹ See *Ward v. Love County*, 253 U. S. 17 (1920); *The Tungus v. Skovgaard*, 358 U. S. 588 (1959).

³⁰ *Testa v. Katt*, 330 U. S. 386 (1947) (state court obligated to give treble damages, required by federal statute, for violation of Emergency Price Control Act).

³¹ See *Avco Corp. v. Aero Lodge No. 735*, 390 U. S. 557, 560, n. 2 (1968) (Court did not decide whether the remedies available in a state court in a suit to enjoin a strike are limited to the remedies available under federal law).

³² See Hart & Wechsler, *The Federal Courts and The Federal System*, 474-477 (1953); Greene, *Hybrid State Law in the Federal Courts*, 83 Harv. L. Rev. 289, 315-319 (1969).

³³ The majority, in its last paragraph, appears not to decide whether the "rule of damages" is "drawn from federal or state sources."

courts and it provides that the federal courts shall look to state law to find appropriate remedies when the applicable federal civil rights law is "deficient in the provisions necessary to furnish suitable remedies" But the majority turns this provision on its head by suggesting (1) that § 1988 creates a federal remedy, apart from state law, when the remedial provisions of a civil rights statute, like § 1982, are "deficient"; and (2) that § 1988 itself somehow imposes this federal remedy on the States. If § 1988 says anything at all relevant for this case, it suggests that in those cases where it is appropriate to cure remedial deficiencies of a federal civil rights statute by implication, this is to be done by looking to state law to see what remedies, consistent with federal policies, would be available there.

By reason of these considerations, many of which could hardly have been foreseen at the time certiorari was granted, I would dismiss the writ in this case as improvidently granted.